

ARTICLE III. EMPLOYEES' RETIREMENT SYSTEM.

DIVISION 1. GENERALLY.

Sec. 33-34. Declaration of policy.

It is the policy of the county to maintain a system of retirement pay and benefits for its employees which is adequately funded and insures employees sufficient income to enjoy during their retirement years. Any modifications to such retirement system shall not reduce the overall value of benefits which existed for members immediately prior to such modifications except that benefits may be reduced if necessary to maintain the fiscal integrity of the system after a finding by the county council that such change is necessary.

Before all liabilities with respect to the members and their beneficiaries are satisfied, no person may use or divert any part of the corpus or income of the retirement system to purposes other than the exclusive benefit of the members and beneficiaries.

Sec. 33-35. Definitions.

In this Article, the following words and phrases have the following meanings:

Account balances: The balances credited to the retirement accounts of each elected officials' participant under the elected officials' plan as of the valuation date preceding the date of distribution, plus any elected officials' participant contributions or county elected officials' contributions allocated to those accounts since that date, determined without regard to vesting.

Accumulated contributions: The sum of all the amounts deducted from the compensation of the member, including picked-up contributions, and all other contributions paid by the member and credited to the member's retirement account plus credited interest as provided in section 33-39.

Actual county service: Service during which a member was in pay status, or on a period of authorized military leave without pay.

Actuarial equivalent: As to any amount, an equivalent amount, determined in accordance with actuarial assumptions provided by an independent enrolled actuary to be used in conjunction with the plan in question.

Board or board of investment trustees: The board of investment trustees established under this article.

County elected officials' contributions: The contributions by the county to the elected officials' plan required under section 33-40.

County government: The county government and, when applicable, any agency whose employees are participating in the retirement system.

County merit system protection board: The merit system protection board as defined in the Charter of Montgomery County, Maryland.

County personnel board or personnel board: The county personnel board as defined in the

Charter of Montgomery County, Maryland.

County service: Employment with the county government or any agency whose employees participate as members of this retirement system, and full-time or career part-time service with another agency by the incumbent of a position brought under the county's merit system without a break in service.

Department, office or agency head: The administrative head of a department or principal office of the county government and of each fire department, rescue squad and other participating agency or political subdivision.

Domestic partner: A person who meets the requirements of Section 33-22 as the domestic partner of a member.

Elected official: The sheriff, the state's attorney, and any county official elected for a fixed term as specifically provided in the Charter.

Elected officials' plan: The defined contribution plan that the county establishes for elected officials.

Elected officials' participant: A member who is participating in the elected officials' plan.

Elected officials' participant contributions: The contributions by an elected officials' participant to the elected officials' plan required under subsection 33-39(a)(3) ("required elected officials' participant contributions") and permitted under subsection 33-39(d) ("voluntary elected officials' participant contributions").

Employee: Any eligible elected or appointed official and any full-time or career part-time employee of the County, or of a participating agency or political subdivision.

Employee organization: An employee organization defined in Section 33-76 that is certified under Section 33-79 or an employee organization defined in Section 33-102(5) that is certified under Section 33-106.

Fiduciary: A person who:

- (1) exercises discretionary authority to manage a retirement system;
- (2) exercises authority to invest or manage assets of a retirement system;
- (3) renders investment advice for a fee or other compensation about assets of a retirement system or has authority or responsibility to render that advice; or
- (4) is a trustee on the Board of Investment Trustees.

Final earnings: Except as otherwise provided, the regular earnings of a member as of the last date of active service.

Firefighter/Rescuer Bargaining Unit: The collective bargaining unit described in Section 33-148 that includes certain non-supervisory employees in the Firefighter/Rescuer series employed by the Department of Fire and Rescue Services.

Integrated retirement plan: A retirement plan that provides full retirement benefits until the member is eligible for full social security retirement benefits and supplemental benefits thereafter.

Investment funds: The separate investment funds the County establishes to permit elected officials' participants to invest their account balances in the elected officials' plan.

Investment manager: A person or entity who is:

- (1) Registered as an investment adviser under the Investment Advisers Act of 1940; or
- (2) A bank, as defined in that act; or
- (3) An insurance company qualified to do business in more than one state; and who acknowledges in writing that it is a fiduciary with respect to the assets of the retirement system that it is managing. However, an insurance company will be deemed to be an investment manager without meeting the provisions of this definition solely with respect to contracts with the insurance company in existence on the day before the day all of the trustees have accepted the trust in writing.

Maximum covered compensation level: The maximum dollar amount of earnings upon which social security benefits are based, assuming: (1) an employee's annual compensation was or will be at least equal to the taxable wage base each calendar year for a 35-year period through the year in which the employee attains social security retirement age; (2) the employee worked in employment covered by the federal social security act during each of the above mentioned calendar years; and (3) the taxable wage base remains constant from calendar year of termination or retirement to attainment of social security retirement age in this determination.

Member: An employee or official of the County government or of a participating agency or political subdivision who is contributing to this retirement system.

Member contributions: The contributions required under Section 33-39 from a member, including amounts deducted from the member's compensation, and picked-up contributions made on or after July 1, 1989.

Normal working time: The number of hours a member would be expected to work in a yearly period including paid authorized leave as may be provided in the personnel regulations. In the case of part-time career member, such "normal working time" will be whatever scheduled work time may be set forth as a condition of the member's appointment.

Office, Professional and Technical Bargaining Unit: The collective bargaining unit described in Section 33-105(a)(1) which includes certain employees in eligible classes associated with office, professional, paraprofessional, and technical functions.

Optional retirement plan: A retirement plan that provides retirement benefits independent of social security retirement benefits.

Part-time employee: Any employee working less than the normal scheduled work week for full-time employees, on a continuing basis.

Picked-up contributions: The contributions picked up by the County or a participating agency under Sections 33-39(a)(1)(B), 33-39(a)(2)(B), or 33-39(a)(3).

Plan Year: The 12-month period on the basis of which the books and records of the retirement system are maintained. The plan year of the retirement system is the same as the County fiscal year.

Police Bargaining Unit: The collective bargaining unit defined in Section 33-76 which includes non-supervisory sworn County police officers.

Police Telecommunicator: An employee assigned to a position in a supervisory or non-supervisory occupational class in the Police Telecommunicator occupational series.

Prior service: County service rendered prior to the date of the establishment of the retirement system or qualified County service rendered prior to membership in the retirement system.

Regular earnings: Except as otherwise provided, gross pay for actual hours worked exclusive of overtime. Regular earnings for an elected official is gross pay for services rendered to the County. For a member who became a member in the retirement system on or after July 1, 1996, regular earnings in plan years beginning on or after July 1, 1996, does not include gross pay over \$150,000, as adjusted by the Internal Revenue Service under Section 401(a)(17) of the Internal Revenue Code for increases in the cost of living. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

- (a) The County's deferred compensation plan under Section 457 of the Internal Revenue Code; or
- (b) Any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code.

Retired member: Any member who is receiving retirement benefits.

Retirement accounts: The accounts, consisting of a required elected officials' participant contributions account, a voluntary elected officials' participant contributions account, and a County elected officials' contributions account, the Board establishes for each elected officials' participant. Investment of the assets of these retirement accounts may be accounted for by maintaining pro rata accounts of a commingled fund or by maintaining separate and distinct accounts for each elected officials' participant. If the Board establishes pro rata accounts, the Board may make the allocation of realized and unrealized gains and losses using the ratio that the account balance of an elected officials' participant bears to the account balances of all elected officials' participants as of the previous valuation date. If the Board establishes separate and distinct accounts, the Board must determine the value of the individual account solely with respect to the activity within each elected officials' participant's account and the valuation must not be affected by the activity of an account of another elected officials' participant.

Retirement savings plan: The defined contribution retirement plan provided in Article VIII for eligible employees of Montgomery County and participating agencies.

Retirement system: The employees' retirement system of Montgomery County, as provided in this Article.

Service, Labor and Trades Bargaining Unit: The collective bargaining unit described in Section 33-105(a)(2) which includes certain employees in eligible classes that are associated with

service/maintenance and skilled crafts.

Social security retirement age: The age used as the retirement age for full (unreduced) benefits under the Federal Social Security Act as follows:

- (a) Age 65 with respect to an employee who attains age 62 before January 1, 2000;
- (b) Age 66 with respect to an employee who attains age 62 after December 31, 1999 and before January 1, 2017; and
- (c) Age 67 with respect to an employee who attains age 62 after December 31, 2016.

Social security retirement age for members who retire or qualify for discontinued service under Section 33-45(d) and (e) before July 1, 1989, is age 65. Social security retirement age for members who are elected officials on July 1, 1989, is age 65 until December 2, 1990, and thereafter is the age set forth in this definition, as appropriate.

Social security wage base: For any particular year, the maximum amount of earnings creditable for benefit computation purposes under the old age, survivors, and disabilities insurance program established by the Federal Social Security Act.

Spouse: Only the husband or wife of a member.

Valuation date: The last business day of March, June, September and December of each year, and any other date the Board establishes for determining the fair market value of the assets of the elected officials' plan.

Sec. 33-36. Establishment.

- (a) *Effective date.* A retirement system is hereby established, effective August 15, 1965.
- (b) *Coverage generally.* The primary purpose of this retirement system is to provide a pension and other benefits for full-time and career part-time paid employees of the county, the Montgomery County Employees Federal Credit Union, fire department, rescue squads, office of the state's attorney, office of the sheriff, office of the board of supervisors of elections, housing opportunities commission, agencies supported or financed in whole or in part by taxes levied by the county council, agencies supported by bond issues underwritten by the county, and political subdivisions of the county. Any agency or political subdivision desiring coverage for its employees may make a written request to the county personnel board for approval. No liability shall accrue to the county by the inclusion of other than county employees. Each participating agency or political subdivision shall be fully responsible for the cost of coverage for its employees and any necessary costs for administrative services provided.
- (c) *Name of retirement system.* The retirement system shall be known as the "employees' retirement system of Montgomery County," and it shall have the powers and privileges of a corporation.
- (d) Notwithstanding the provisions of any plan, the County must provide contributions, benefits, and service credit for qualified military service according to Section 414(u) of

the Internal Revenue Code.

DIVISION 2. ELIGIBILITY AND QUALIFICATIONS.

Sec. 33-37. Membership requirements and membership groups.

(a) *Full-time employees.*

- (1) A full-time employee of the County or participating agency must become a member of a County retirement plan as a condition of employment, if the employee waives all rights of membership under any other retirement system supported in whole or in part by the State, a political subdivision of the State, or the County.
- (2) A part-time employee who becomes a full-time employee and is not an active member of any County retirement plan, must become an active member of either:
 - (A) the integrated retirement plan, if the employee is eligible for membership in the integrated plan; or
 - (B) the Retirement Savings Plan, if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or return to County service on or after October 1, 1994.
- (3) A temporary employee who becomes a full-time employee must become an active member of either:
 - (A) the integrated plan, if the employee is eligible for membership in the integrated plan; or
 - (B) the Retirement Savings Plan, if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or return to County service on or after October 1, 1994.

(b) *Part-time employees.*

- (1) A part-time employee of the County or participating agency may become a member of a County retirement plan if the employee waives all rights of membership under any other retirement system supported in whole or in part by the State, a political subdivision of the State, or the County. Membership is effective on the date the employee's application for membership is approved.
- (2) A part-time employee who is not an active member of a retirement plan may become a member of either:
 - (A) the integrated plan, if the employee is eligible for membership in the integrated plan; or
 - (B) the Retirement Savings Plan if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or

return to County service on or after October 1, 1994.

- (3) A part-time employee who withdraws from active membership in a County retirement plan may not become an active member again unless the employee becomes a full-time employee or an elected official.
 - (4) An employee who becomes a member of the integrated plan may not withdraw from active membership except by transferring to the Retirement Savings Plan under Section 115(c)(2).
 - (5) A full-time employee who becomes a part-time employee may withdraw from active membership in the optional or integrated plan and stop making retirement contributions, but may not become an active member of a County retirement plan again unless the employee becomes a full-time employee or an elected official.
- (c) *Elected officials.* Membership will be optional for the sheriff, the state's attorney, and for any county official elected for a fixed term as specifically provided in the charter of the county, and without the need to meet any other entrance membership requirements that may be specified herein. Membership shall be effective on the date the employee's application for membership is approved.
- (d) *Appointed officials.* Each person appointed by the County Executive or County Council to head a department, office, or agency of the county government must be subject to all regulations and laws governing full-time members of the retirement system. Any person appointed by the Executive or Council to serve as a hearing examiner must be treated as a full-time employee under the laws and regulations governing members of the retirement system if that person serves full time as a hearing examiner, and must be treated as a part-time employee under the laws and regulations governing members of the retirement system if that person serves less than full time as a hearing examiner.
- (e) *Retirement plans.*
- (1) This retirement system consists of an integrated retirement plan, an optional retirement plan, and an elected officials' plan.
 - (2) An employee enrolled or re-enrolled on or after July 1, 1978, and before October 1, 1994, is a member of the integrated retirement plan unless the employee becomes a member of the Retirement Savings Plan through transfer or election. An employee enrolled before July 1, 1978, may be a member of the optional retirement plan, the integrated retirement plan, or the Retirement Savings Plan. A member's decision to transfer from the optional retirement plan or the integrated retirement plan is irrevocable. A former County employee who returns to County service is a member of the plan in which the employee was enrolled when the employee left County service if the employee:
 - (A) was vested under Section 33-45 when the employee left County service;
 - (B) left all member contributions plus credited interest in the fund;
 - (C) returned to County service within 25 months; and
 - (D) did not transfer to the Retirement Savings Plan.

- (3) (A) If the County or a participating agency withdraws from Social Security, each member of the integrated retirement plan must have an opportunity to re-enter the optional retirement plan after repaying the prior refund and any difference in member contributions required for the period of membership in the integrated retirement plan. Any additional contributions must not be treated as picked-up contributions.
- (B) The Chief Administrative Officer may treat a member as if the member had been in the optional retirement plan since the beginning of the member's entry into the retirement system if the member is:
 - (i) employed by a participating agency; and
 - (ii) a member of the integrated plan; but not covered by Social Security during the period of employment by the participating agency.

The Chief Administrative Officer may require additional member contributions and participating agency contributions.

- (4) (A) An individual who is an elected official on December 1, 1986, and was a Group A employee before December 1, 1986, must continue to participate in the retirement plan of the retirement system in which the individual participated immediately before December 1, 1986, except as provided in subsection (e)(5)(A). An individual who is an elected official on December 1, 1986, and was not a member of a retirement plan of the retirement system on November 30, 1986, as a result of exercising the right described in subsection (c), may elect to become a participant in the elected officials' plan as provided in subsection (e)(5)(A).
- (B) An individual who is an elected official on December 1, 1986, and was not a Group A employee on November 30, 1986, must become an elected officials' participant on December 1, 1986, except as provided in subsection (e)(6)(A).
- (C) An individual who becomes an elected official on or after December 2, 1986, but before December 1, 1989, must become an elected officials' participant on the date the individual becomes an elected official except as provided in subsection (e)(6)(A).
- (D) (i) Except as otherwise provided, any individual who becomes an elected official on or after December 1, 1989 must become an elected officials' participant on the date the individual becomes an elected official.
- (ii) If any highly compensated participant must be excluded from the elected officials' plan to maintain the plan's qualified status under the Internal Revenue Code, the highly compensated participant must participate in the retirement savings plan under Article

VIII.

- (5) (A) An elected official who must continue to participate in another plan under subsection (e)(4)(A) may become an elected officials' participant at any time while an elected official.
 - (B) An individual who makes the choice under subsection (e)(5)(A) retains that individual's rights under the plan in which that individual was a member before that date, except for disability, but is not entitled to a refund of contributions to the prior plan because of the transfer to the elected officials' plan. The disability benefits of the individual who chooses to be an elected officials' participant are provided in article VI. That individual's vested rights under the elected officials' plan must be determined based on that individual's total number of years of credited service. The amount of that individual's retirement benefit under the prior plan must be determined based only on credited service while participating in the prior plan. However, that individual's regular earnings until the time of retirement or other termination of service with the County or a participating agency must be used in determining final average earnings for purposes of determining the amount of the retirement benefit under the prior plan.
 - (C) The county executive must develop regulations, under method (3), to allow an eligible individual to make the choice provided for in this subsection 33-37(e)(5).
- (6) (A) An elected official who must become an elected officials' participant under subsection (e)(4)(B) or (e)(4)(C) may choose to participate in a retirement plan of the retirement system in which the elected official would otherwise be eligible to participate. An elected official who must become an elected officials' participant under subsection (e)(4)(B) must make this choice before July 1, 1987. An elected official who must become an elected officials' participant under subsection (e)(4)(C) must make this choice before the date that is 7 months from the elected official's date of enrollment.
 - (B) An elected official who makes the choice under subsection (e)(6)(A) must receive the account balance in that elected officials participant's voluntary elected officials' participant contributions account. The account balance of that participant's required elected officials' participant contributions account will be transferred to the retirement plan in which the elected official has chosen to participate. The elected official also must contribute to the plan the difference between:
 - (i) The mandatory contributions the elected official would have contributed to the plan between the date of enrollment in the elected officials' plan and the date of transfer had the elected official participated during that period; and
 - (ii) That elected officials' participant's required elected officials'

participant contributions account balance. The account balance in that participant's county elected officials' contributions account is forfeited and the county must contribute to the other plan, on behalf of that elected official, whose contributions the county would have made between the date of the enrollment in the elected officials' plan and the date of transfer had the elected official participated in that plan during that period.

- (C) The County Executive must issue regulations, under method (3), to allow an eligible individual to make the choice allowed under subsection (e)(6)(A).
 - (D) An elected official who must become an elected officials' participant under subsection (e)(4)(B) or (e)(4)(C) also may participate in another retirement plan of the retirement system under subsection (e)(7).
- (7) Except as provided in this paragraph, an individual who becomes an elected officials' participant must remain an elected officials' participant until that individual is not an elected official. An elected officials' participant who is eligible to make a choice under subsection (e)(5)(A) or (e)(6)(A) and who has completed the lesser of a full term of office or 4 years of credited service in the elected officials' plan may choose at that time, and, except as provided under subsection (e)(6)(A), only at that time, to stop participating in the elected officials' plan and participate in the retirement plan in which that elected official would have been a participant if that elected official had not chosen to participate in the elected officials' plan. A participant who chooses to transfer to the other plan keeps the right to benefits under the elected officials' plan, but must not receive a distribution of any account balances. The elected official's credited service for purpose of vesting in the other plan must be determined based on the elected official's total number of years of credited service. The amount of the elected official's benefit under the other plan must not be increased by the elected official's credited service earned while the elected official participated in the elected official's plan. If an elected official stops participating in the elected officials' plan, the elected official's disability retirement benefit must still be determined under the article VI disability benefits program. If an elected official stops participating in the elected officials' plan, the elected official's retirement benefit under the other plan must be determined using the regular earnings of the elected official during the applicable periods immediately before the end of the elected official's employment with the County.
- (8) A former County employee who returns to County service may transfer to the Retirement Savings Plan the actuarial present value of the employee's benefit in the Employees' Retirement System, calculated using the System's latest published valuation assumptions, as of the date the employee returns to County service, if the employee:
- (A) was vested under Section 33-45 when the employee left County service;
 - (B) left all member contributions plus credited interest in the fund;

- (C) left County service before October 1, 1994; and
 - (D) did not return to County service within 25 months.
- (f) *Membership groups and eligibility.* Any full-time or part-time employee is eligible for membership in the appropriate membership group outlined below if the employee meets all of the requirements for the group:
 - (1) Group A: An employee, elected official, or appointed official not eligible for membership in another group is a group A member. An employee who otherwise would be eligible for membership in group A must participate in the Retirement Savings Plan if the employee:
 - (A) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
 - (B) is not represented by an employee organization;
 - (C) does not occupy a bargaining unit position; and
 - (D) is not an elected official (except as provided in subsection (e)(4)(D)(ii)).
 - (2) Group B: Any correctional officer, fire prevention officer or deputy sheriff, appointed or promoted to the position on or before June 30, 1978, who has not elected to transfer to any other membership group. Any correctional officer, fire prevention officer or deputy sheriff who is a group A member as of June 30, 1978, may elect to retain membership therein.
 - (3) Group D: Any full-time police officer appointed on or before August 15, 1965, who has been continuously employed as a police officer and has not elected to transfer to any other membership group.
 - (4) Group E: The chief administrative officer, the director of the council staff, the hearing examiners, the county attorney and each head of a principal department, office or agency of the county government, if appointed to such position before July 30, 1978, or a member having held such position on or before October 1, 1972. Any sworn deputy sheriff and any County correctional staff or officer as designated by the chief administrative officer. Any group E member who has reached elective early retirement date may retain membership in group E in the event of transfer from the position which qualified the member for group E. Any group E member who is temporarily transferred from the position which qualified the member for group E may retain membership in group E as long as the temporary transfer from the group E position does not exceed 3 years. Notwithstanding the foregoing provisions in group E, any employee who is eligible for membership in group E must participate in the retirement savings plan under Article VIII if the employee:
 - (A)
 - (i) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
 - (ii) is not represented by an employee organization; and

- (iii) does not occupy a bargaining unit position; or
 - (B)
 - (i) begins County service on or after October 1, 1994; and
 - (ii) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the retirement savings plan.
- (5) Group F: sworn police officers.
 - (A) A group F member who has reached elective early retirement date may retain membership in group F if the member is transferred from the position that qualified the member for group F membership.
 - (B) A group F member who is temporarily transferred from the position that qualified the member for group F membership may retain membership in group F as long as the temporary transfer from the group F position does not exceed 3 years.
 - (C) Notwithstanding the foregoing provisions in group F, an employee who is eligible for membership in group F must participate in the retirement savings plan under Article VIII if the employee:
 - (i)
 - (a) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
 - (b) is not represented by an employee organization; and
 - (c) does not occupy a bargaining unit position; or
 - (ii)
 - (a) begins County service on or after October 1, 1994; and
 - (b) is subject to the terms of a collective bargaining agreement between the County and an employee organization that requires the employee to participate in the retirement savings plan.
 - (D) A group F member who is a member of the Police Bargaining Unit may transfer to the retirement savings plan under Article VIII if the employee has accumulated enough credited service to obtain the maximum retirement benefit under the optional or integrated plan.
 - (6) Group G: Any paid firefighter, paid fire officer, and paid rescue service personnel. Any group G member who has reached elective early retirement date may retain membership in group G in the event of transfer from the position which qualified the member for group G. Any group G member who is temporarily transferred from the position which qualified the member for Group G may retain membership in group G as long as the temporary transfer from the group G position does not exceed 3 years. Notwithstanding the foregoing provisions in group G, any employee who is eligible for membership in group G

must participate in the retirement savings plan under Article VIII if the employee:

- (A) (i) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
- (ii) is not represented by an employee organization; and
- (iii) does not occupy a bargaining unit position; or
- (B) (i) begins County service on or after October 1, 1994; and
- (ii) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the retirement savings plan.

(7) Group H: Any member, including any probationary employee, who holds a bargaining unit position described in section 33-105(a)(1) or section 33-105(a)(2), unless the member is eligible for membership in group B or E. Notwithstanding the foregoing provisions in group H, any employee who is eligible for membership in group H must participate in the retirement savings plan under Article VIII if the employee:

- (A) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2)); and
- (B) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the retirement savings plan.

(g) *Transfer from one group to another.* A member who elects to transfer from one membership group to another as a result of amendments to this Article must transfer by December 31, 1978, or forfeit this option. However, under paragraph 4, a group D member may transfer to group F at any time before the member's retirement date. Additional contributions made as a result of the transfer must not be treated as picked-up contributions.

(1) Transfers From Group A to Group E, F, G, or H. Whenever a group A member transfers to a position which is qualified for membership in group E, F, G, or H, the retirement service credits earned as a group A member must be used for the purpose of qualifying for retirement. Except for the contribution rate increase as of the effective date of transfer, there will be no additional charges levied on any member who is transferred prior to July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, G, or H from July 1, 1970, or hire date, if later, plus interest at the rate of 6 1/2 percent per annum to date of full payment.

- (2) Transfers From Group B, D, E, F, or G to Group A or H. Whenever a group B, D, E, F, or G member transfers to a position which is qualified for membership in group A or H, the retirement service credits earned as a group B, D, E, F, or G member must be used for the purpose of qualifying for retirement as a group A or H member. The rate of contribution must be decreased as of the date of transfer and no refund will be made of the difference in member contributions. Notwithstanding any other provision of this article, any group E, F, or G member who has not met the elective early retirement date and who transfers to group A or H must receive credited service at the rate of 1.25 years of service for each full year of service as a member of group E, F, or G.
- (3) Transfers From Group B to Group E, F, or G. Whenever a group B member transfers to a position which is qualified for membership in group E, F, or G, the retirement date must be adjusted accordingly. Except for the contribution rate increase as of the effective date of transfer, there must be no additional charges levied on any member who transferred on or before July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, or G from July 1, 1970, or hire date, if later, plus interest at the rate of 6 ½ percent per annum to date of full payment.
- (4) Transfers From Group D to Group E, F, or G. A group D member may transfer to group E, F, or G and the retirement service credits earned as a group D member must be used for the purpose of qualifying for retirement under group E, F, or G. Except for the contribution rate increase as of the effective date of transfer, there will be no additional charges levied on any member who transferred on or before July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, or G from July 1, 1970, plus interest at the rate of 6 ½ percent per annum to date of full payment.
- (5) Transfers From Group H to Group A, E, F, or G. A group H member may transfer to group A, E, F, or G and the retirement service credits earned as a group H member must be used for the purpose of qualifying for retirement under group A, E, F, or G. Any member who transfers on or after July 1, 1989, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group A, E, F, or G from July 1, 1970, or hire date, if later, plus interest at the rate of 6 ½ percent per annum to date of full payment.
- (h) *Requirements of membership.* Unless specifically exempt from membership by the chief administrative officer, each full-time employee of the county government or a participating agency must become a member or forfeit employment. If the administrative head of a participating agency fails to enforce this provision, new employees of the agency shall be ineligible to be enrolled as members.
- (i) *Transfers to the Retirement Savings Plan.* Any member in the optional retirement plan or in the integrated retirement plan may elect to participate in the Retirement Savings Plan

under Article VIII if the member otherwise qualifies for participation under Section 33-115, even if the member did not begin County service on or after October 1, 1994. If an employee transfers from the optional retirement plan or the integrated plan to the Retirement Savings Plan:

- (1) transfers must not be made before April 1, 1995;
 - (2) the election to transfer to the retirement savings plan is irrevocable;
 - (3) the member's credited service for purposes of vesting in the optional retirement plan or the integrated plan must include the member's years of credited service earned while participating in the retirement savings plan;
 - (4) the amount of the member's benefit under the optional retirement plan or the integrated plan must not be increased by the member's credited service earned while participating in the retirement savings plan; and
 - (5) the member's retirement benefit under the optional retirement plan or the integrated plan must be determined using the regular earnings of the member during the applicable years preceding the member's transfer to the retirement savings plan.
 - (6) the amount of sick leave used for credited service under Section 33-41(f) must not exceed the amount of sick leave accumulated on the date the employee transferred to the Retirement Savings Plan, or the amount accumulated on the effective date of the employee's retirement or separation from County service, whichever is less.
- (j) *Election to join the Retirement Savings Plan.* An employee who is eligible for membership in the integrated retirement plan but who chooses to become a member of the Retirement Savings Plan must remain a member of the Retirement Savings Plan until the employee becomes ineligible for membership in Group I or II.

Sec. 33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.

- (a) *Normal retirement date.* The normal retirement date is the first day of the month elected by a member after the member meets the years of service and age requirements for the applicable membership group. For normal retirement:
- (1) *Group A:*
 - (A) The member must have at least:
 - (i) 5 years of credited service and be at least age 60; or
 - (ii) 30 years of credited service and be at least age 55.
 - (B) After June 30, 2002, a Group A member who is a Police Telecommunicator must have at least:

- (i) 5 years of credited service and be at least age 60; or
 - (ii) 30 years of credited service and be at least age 50.
- (2) *Group B*: The member must have at least:
 - (A) 15 years of credited service and be at least age 55; or
 - (B) 30 years of credited service and be at least age 51.
- (3) *Group D*: The member must meet the requirements of the County police relief and retirement fund law.
- (4) *Group E*: The member must have at least:
 - (A) 15 years of credited service and be at least age 55; or
 - (B) 25 years of credited service and be at least age 46.
- (5) *Group F*: The member must have at least:
 - (A) 15 years of credited service and be at least age 55; or
 - (B) 25 years of credited service and be at least age 46.
- (6) *Group G*: The member must have at least:
 - (A) 15 years of credited service and be at least age 55; or
 - (B) 25 years of credited service regardless of age.
- (7) (A) *Group H*: The member must have at least:
 - (i) 5 years of credited service and be at least age 60; or
 - (ii) 30 years of credited service and be at least age 55.
 - (B) After June 30, 2002, a Group H member who is a Police Telecommunicator must have at least:
 - (i) 5 years of credited service and be at least age 60; or
 - (ii) 30 years of credited service and be at least age 50.
 - (C) After June 30, 2002, a Group H member who is also an SLT bargaining unit member must have at least:
 - (i) 5 years of credited service and be at least age 60; or
 - (ii) 30 years of credited service and be at least age 50.

- (8) An elected officials' participant must have at least the lesser of a full term of office or 4 years of credited service and be at least age 62.
- (b) *Retirement date election.* A member must submit written application for retirement at least 30 days before the date elected. In extenuating circumstances, the Chief Administrative Officer may waive this requirement.
- (c) *Mandatory retirement date.* The mandatory retirement date for a group A or H member is the first day of the month following the member's 70th birthday. The mandatory retirement date for a group B, D, E, F, or G member is the first day of the month following the member's 60th birthday.
- (d) *Mandatory retirement date extension.* The Chief Administrative Officer may grant one or more one-year extensions of active membership in accordance with the following procedures:
 - (1) Request for extension may be initiated by the member, the immediate supervisor or department head. The department head's recommendation must be reviewed by the Chief Administrative Officer.
 - (2) The request and all endorsements must clearly demonstrate that the extension is in the best interest of the County.
 - (3) The Chief Administrative Officer may request a certification of the medical examiner that the member is medically acceptable for continuance in the position.
 - (4) Request for an extension must be submitted at least 60 days prior to mandatory retirement date.

The same procedures must be followed by a member of a participating agency requesting an extension and will be subject to all requirements established by the Chief Administrative Officer.

- (e) *Early retirement date.* A member who has not met the age and service requirements for a normal retirement date may elect to retire on the first day of a month and may elect to receive pension payments beginning on an early retirement date if the following requirements are met:
 - (1) The group A member has at least 15 years of credited service and has reached age 50, or has at least 20 years of credited service and has reached age 45.
 - (2) The group B member has at least 15 years of credited service and has reached age 45.
 - (3) The group E member has at least 15 years of credited service and has reached age 45, or has at least 20 years of credited service and has reached age 41.
 - (4) The group F member has at least 15 years of credited service and has reached age 45, or has at least 20 years of credited service and has reached age 41.

- (5) The group G member has at least 15 years of credited service and has reached age 45, or has at least 20 years of credited service and has reached age 41.
 - (6) The group H member has at least 15 years of credited service and has reached age 50, or has at least 20 years of credited service and has reached age 45.
- (f) *Trial retirement.*
- (1) A trial retirement under this subsection is not available to:
 - (A) a member required to retire under subsection (c);
 - (B) an elected official;
 - (C) a non-merit appointed official;
 - (D) a member covered under a collective bargaining agreement, except for a member of the Police Bargaining Unit;
 - (E) a non-County Government employee; or
 - (F) a member who participates in a retirement incentive program.
 - (2) A member who is eligible for normal retirement may retire on a trial basis for a period not to exceed 9 months.
 - (3) A member may retire on a trial basis only once.
 - (4) A member who wishes to retire on a trial basis must notify the Chief Administrative Officer in writing at least 30 days before the retirement date of the member's intention to retire on a trial basis.
 - (5) A member may elect to return to County service before the end of the nine-month trial retirement period by notifying the Chief Administrative Officer in writing at least 30 days before the member returns to service, under procedures adopted by the Chief Administrative Officer.
 - (6) (A) After the member notifies the Chief Administrative Officer that the member intends to return to County service, the Chief Administrative Officer must return the member to:
 - (i) the position the member held before retirement, if it is still available;
 - (ii) a position with an equivalent salary and grade in the same or another office of the County government; or
 - (iii) if the member was a member of the Police Bargaining Unit, to a position in the Department of Police with an equivalent salary

and grade, when such a position becomes available.

- (B) The member may accept a position with a lower salary or grade, but is not required to do so.
 - (C) If the member does not accept an offer of the position that the member held before retirement or a position with an equivalent salary and grade, the member is considered to have permanently retired.
- (7) A member returning from trial retirement:
 - (A) Has the same rights and benefits as the member had before the trial retirement; and
 - (B) Receives a salary reflecting all cost-of-living adjustments granted to that position while the member was on trial retirement.
- (8) When the Chief Administrative Officer receives notice of a member's intention to retire on a trial basis, the member must not be paid for accrued annual leave until:
 - (A) The member notifies the Chief Administrative Officer in writing that the member no longer intends to retire on a trial basis; or
 - (B) The member retires permanently.

Sec. 33-38A. Deferred Retirement Option Plans.

The Chief Administrative Officer must establish Deferred Retirement Option Plans, or DROP plans, that allow any employee who is a member of a specified membership group or bargaining unit and who meets the eligibility requirements to elect to retire but continue to work. Pension payments must not be paid to the member while the member participates in the DROP Plan. When the member's participation in the DROP Plan ends, the member must stop working for the County, draw a pension benefit based on the member's credited service and earnings as of the date that the member began to participate in the DROP Plan, and receive the value of the DROP Plan payoff.

- (a) *DROP Plan for Group F members.* "Discontinued Retirement Service Program" or "DRSP" means the DROP program for Group F members.
 - (1) *Eligibility.* A Group F member who is at least 41 years old and has at least 20 years of credited service may participate in the DRSP.
 - (2) *Application requirements.* An eligible employee must apply at least 60 days before the employee becomes a participant. The County must not approve an application for participation in the DRSP on or after March 1, 2001. An employee may withdraw a pending application within 2 weeks after submitting the application.
 - (3) *Employee participation and termination.* The employee's participation in the DRSP must begin on the first day of a month that begins at least 60 days, but not more than 90 days, after the employee applied and must end 2 years after the employee begins to participate or at an earlier date chosen by the employee.

When the employee's participation in the program ends, the employee must stop working for the County and receive a pension benefit.

- (4) *Employment status.* An employee who participates in the program must continue to be a member of the retirement system, earn sick and annual leave, and remain eligible to participate in health and life insurance programs.
- (5) *Retirement date, retirement contributions, and credited service.* The retirement date of an employee who participates in the program is the date when the employee begins to participate in the DRSP, and neither the employee nor the County will make retirement contributions after that date. An employee who wishes to purchase prior service must do so before the employee's participation in the program begins. Sick leave in excess of 80 hours will be credited towards retirement at the beginning of the employee's participation.
- (6) *Pension benefits.*
 - (A) Before an employee's participation begins, the employee must select a:
 - (i) pension payment option under Section 33-44 for the regular retirement pension payments; and
 - (ii) pension payment distribution option for the distribution of the employee's DRSP account.
 - (B) Pension benefits will not be paid to the employee while the employee participates in the program, but will be deposited in a DRSP account established for the participant by the County. The participant must receive the account balance and the County must close the account within 60 days after the employee's participation in the program ends.
 - (C) An employee must direct the Board of Investment Trustees to allocate contributions to the employee's DRSP account to be invested in one or more of the investment funds selected by the Board. The investment fund options selected by the Board must conform to all applicable requirements of the Internal Revenue Code. An employee must allocate contributions among the investment funds in percentages of the value of the employee's DRSP account balances. An employee's direction of investment must remain in effect until the employee changes the direction. If an employee does not provide a valid direction of investment, the Board must select an appropriate investment option and invest the DRSP account balances not governed by a valid direction of investment in the investment option.
 - (D) After the employee's participation in the program ends, the employee's pension benefit will be based on:
 - (i) the employee's credited service immediately prior to the beginning of the employee's participation in the program, adjusted to include credit for unused sick leave under Section 33-41;

- (ii) the employee's average final earnings, excluding earnings during the period of participation in the program; and
 - (iii) increases in the consumer price index during the period of the employee's participation that would have resulted in an increase in the employee's pension benefit if the employee had not been participating in the program.
- (7) *Disability retirement.* An employee may apply for disability retirement prior to the termination of the employee's participation in the program. An employee who receives a service-connected disability retirement will receive the balance in the DRSP account less an amount equal to the full actuarial value of the credited service which the employee would have received if the employee had not participated in the program. If an employee's participation in the program ends before a final decision is made on the disability retirement application, the balance of the DRSP account will not be distributed until a final decision is made.
- (8) *Death benefit.* If an employee dies during the employee's participation in the program, the employee's beneficiary will receive:
 - (A) the death benefit that the beneficiary would have received if the employee had retired on the date on which the employee began to participate in the program, adjusted under subsection (6)(D); and
 - (B) the balance of the employee's DRSP account.
- (9) *DRSP account distribution options.* An employee may elect to have the balance of the DRSP account distributed as a lump sum or an annuity, or to have some or all paid directly to an eligible retirement plan as a direct rollover distribution. To the extent feasible as determined by the Chief Administrative Officer, an employee alternatively may choose to receive the account balance as periodic payments calculated and distributed as an addition to the employee's regular retirement benefit. If the employee dies before the balance of the DRSP account is distributed, the beneficiary may elect to receive distribution of the balance according to any option described in this paragraph.
- (10) *Termination of program for Group F members.* The DRSP Plan program for Group F members must end on March 1, 2003.
- (b) *DROP Plan for Group G members.*
 - (1) *Eligibility.* An employee who is a member of Group G and who has completed at least 25 years of credited service may participate in the DROP Plan.
 - (2) *Application requirements.* An eligible employee must apply at least 45 days before the employee becomes a participant. An employee may withdraw a pending application within 2 weeks after submitting the application.
 - (3) *Employee participation and termination.*

- (A) The employee's participation in the DROP Plan must begin on the first day of a month that begins at least 45 days, but not more than 75 days, after the employee applied.
 - (B) A Group G member may participate in the DROP Plan for up to 36 months. An employee who elects to stop participating before the end of the 36-month period must notify Fire and Rescue Services and the Office of Human Resources at least 60 days before stopping participation in the program.
 - (C) When the employee's participation in the DROP Plan ends, the employee must stop working for the County and receive a pension benefit.
- (4) *Employment status.* A DROP Plan participant must continue to be a member of the retirement system, earn sick and annual leave, and remain eligible to participate in health and life insurance programs for employees while the member participates in the DROP Plan.
- (5) *Retirement date, retirement contributions, and credited service.*
- (A) The retirement date of a member who participates in the DROP Plan is the date when the employee begins to participate in the DROP Plan.
 - (B) The member will continue to make retirement contributions to the Optional Plan or Integrated Plan while participating in the DROP Plan. The County must not make retirement contributions on behalf of the member after the date on which the member's DROP Plan participation begins.
 - (C) Sick leave credited towards retirement at the beginning of the member's participation will not be available for the member's use after participation in the DROP Plan begins.
 - (D) A member who wishes to purchase prior service must do so before the member's participation in the DROP Plan begins.
- (6) *Pension benefits.*
- (A) Before a member's participation begins, the member irrevocably must choose a pension payment option under Section 33-44 for retirement pension payments.
 - (B) Pension benefits will not be paid to the member while the member participates in the DROP Plan. Pension payments that are deferred while the member participates in the DROP Plan must not include cost-of-living increases under Section 33-44 that were given to retirees and beneficiaries during the period of the member's participation in the DROP Plan. The participant will receive the deferred pension payments when the member's participation in the DROP Plan ends, or within 60

days after the member gives notice under paragraph (3)(B), whichever is later.

- (C) After the member's participation ends, the member's pension benefit will be based on the member's:
 - (i) credited service, including credit for unused sick leave, before the member's participation in the DROP Plan began, adjusted to include credit for unused sick leave accrued during the period of DROP Plan participation; and
 - (ii) average final earnings, excluding earnings during the period of participation in the DROP Plan.
- (D) The pension benefit that a member receives after the member's participation in the DROP Plan ends must be adjusted to reflect cost-of-living adjustments under Section 33-44(c) that occurred during the period of the member's participation in the DROP Plan, but the pension payments that are deferred during the participation period must not include cost-of-living adjustments.

(7) *Disability retirement.* A member may apply for disability retirement prior to the termination of the member's participation in the DROP Plan. A member who is determined to be eligible for a service-connected disability retirement must elect to receive either:

- (A) the retirement benefit under subsection (6)(C) and the DROP Plan payoff; or
- (B) the service-connected disability retirement benefit that the member would have received if the member had continued as an active employee and not elected to participate in the DROP Plan.

A member who elects to receive a service-connected disability retirement must not receive the DROP Plan payoff.

(8) *Death benefit.* If a member dies during the member's participation in the DROP Plan, the member's beneficiary will receive the greater of:

- (A) the death benefit that the beneficiary would have received if the member had retired on the date on which the member began to participate in the DROP Plan, calculated to reflect cost-of-living adjustments under Section 33-44(c) that occurred during the period of DROP Plan participation, and the value of the DROP Plan payoff, not including retroactive cost-of-living adjustments to the deferred pension payments; or
- (B) the service-connected death benefit that the beneficiary would have received if the member had not elected to participate in the DROP Plan, but not the DROP Plan payoff.

- (9) *DROP Plan payoff and distribution.*
- (A) *DROP Plan payoff.* The DROP Plan payoff must include the total of the following, accumulated over the period of the member's participation in the DROP Plan:
- (i) the member's deferred monthly pension payments, not including any cost-of-living adjustments;
 - (ii) the member's retirement contributions to the Optional Plan or Integrated Plan treated as picked-up contributions; and
 - (iii) 8.25 percent annual interest compounded quarterly, credited each calendar quarter on the amount in the DROP Plan payoff at the beginning of each quarter during the member's participation in the DROP Plan.
- (B) *DROP Plan payoff distribution options.* At the time that a member's DROP Plan participation ends, the member must elect to have the DROP Plan payoff distributed as a:
- (i) lump sum payment;
 - (ii) annuity; or
 - (iii) direct rollover distribution, in compliance with the Internal Revenue Code, to an eligible retirement plan.

Sec. 33-39. Member contributions and credited interest.

- (a) *Member contributions.* Each member of the retirement system must contribute a portion of the member's regular earnings through regular payroll deductions.
- (1) **Member Contributions to the Optional Retirement Plan.** A member of the Optional Retirement Plan must contribute the following percentage of regular earnings:
- A. Group A or H member, 6 percent;
 - B. Group B member, 7 percent;
 - C. Group D member, 7 ½ percent; and
 - D. Group E, F, or G member, 8 ½ percent.
- (2) **Member Contributions to the Integrated Retirement Plan.** A member of the Integrated Retirement Plan must contribute the following percentage of regular earnings:
- (A) Group A, 4 percent up to the maximum Social Security wage base, and 6

percent of regular earnings that exceed the wage base;

- (B) Group B, 4 ½ percent up to the maximum Social Security wage base, and 7 percent of regular earnings that exceed the wage base;
- (C) Group E, 4 ¾ percent up to the maximum Social Security wage base, and 8 ½ percent of regular earnings that exceed the wage base;
- (D) Group F, 4 ¾ percent up to the maximum Social Security wage base and 8 ½ percent of regular earnings that exceed the wage base;
- (E) Group G, 4 ¾ percent up to the maximum Social Security wage base and 8 ½ percent of regular earnings that exceed the wage base and;
- (F) Group H, 4 percent up to the maximum Social Security wage base and 6 percent of regular earnings that exceed the wage base.

- (3) Member Contributions to the Elected Officials' Plan. A member of the Elected Officials' Plan must contribute 3 percent. To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Elected Officials' Plan.
- (4) To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Optional and Integrated, Retirement Plans for pay periods beginning after June 30, 1989.
- (5) The Chief Administrative Officer may allow an agency that is not an "employing unit" (as described in Section 414(h)(2) of the Internal Revenue Code) to participate in the retirement system. The County must not "pick up" (as described in the Internal Revenue Code) mandatory contributions of members employed by a participating agency that is not an "employing unit."

(b) *Credited interest.*

- (1) For the period beginning July 1, 1978, and ending June 30, 1989, interest must be credited annually on each member's accumulated contributions at a rate of 4 percent per annum for the first 5 years of membership only. Members who had more than 5 years of membership on July 1, 1978, must retain all credited interest as of that date.
- (2) Members who have terminated employment and vested prior to July 1, 1978, must receive interest at the rate of 4 percent per annum for as long as they remain a vested member.
- (3) Effective July 1, 1989, interest must be credited annually on each member's accumulated contributions as of June 30, 1989, and thereafter, as follows:
 - (A) For group A members, interest will be credited at a rate of 4 percent per annum.

- (B) For group B members, interest will be credited at a rate of 4 percent per annum.
- (C) For group D members, interest will be credited at a rate of 4 percent per annum.
- (D) For group E members, interest will be credited at a rate of 4 percent per annum.
- (E) For group F members, interest will be credited at a rate of 4 percent per annum.
- (F) For group G members, interest will be credited at a rate of 4 percent per annum.
- (G) For group H members, interest will be credited at a rate of 4 percent per annum.

- (4) If a member is an elected official on July 1, 1989, interest on that member's accumulated contributions must be credited under subsection (b)(1) until December 2, 1990. On and after December 3, 1990, interest must be credited on the elected official's accumulated contributions as of December 3, 1990 under subsection (b)(3) of this subsection.

(c) *Return of member contributions.*

- (1) Refund after employee's separation. The County must refund contributions to a member who is separated from County service, unless the member dies or retires. The County must pay member who has not elected to vest the full amount of accumulated contributions with credited interest, less any indebtedness to the county government or the Montgomery County Employees Federal Credit Union.
- (2) Refund after separation of an elected officials' participant. An elected officials' participant who ends employment with the County before that participant's normal retirement date, and who does not receive a mandatory refund of the participant's account balances under Section 33-40(d)(2)(D), may, at the participant's request, receive the account balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts established for that participant, less any indebtedness to the County or the Montgomery County Employees Federal Credit Union, in a single lump-sum payment.
- (3) Refund after a member's death. If a member dies, the Chief Administrative Officer must pay to the designated beneficiary accumulated member contributions plus credited interest, less any indebtedness to the County government, unless the beneficiary is eligible for an annuity under Section 33-46. If an elected officials' participant dies before the county has implemented the method of distribution under section 33-44, the chief administrative officer must pay to the beneficiary, in accordance with Section 33-46(g), the account

balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts, less any indebtedness to the County or the Montgomery County Employees Federal Credit Union.

- (4) Refund after an employee elects to participate in the integrated plan instead of the optional plan. When a member elects to participate in the integrated retirement plan instead of the optional retirement plan, the member must receive a refund of member contributions that exceeded the amount that would have been paid if the contribution rate of the integrated retirement plan had been in effect from date of enrollment to date of election, plus credited interest earned on those contributions. Despite this requirement, a member who elects to participate in the integrated retirement plan instead of the optional retirement plan while still employed by the County government must not receive a refund of picked-up contributions made on or after July 1, 1989 or credited interest earned on those contributions. Picked-up contributions made on or after July 1, 1989 and credited interest may be refunded only if one of the events described in Section 33-45(b) occurs.
- (5) Refund after a statutory change that reduces the maximum years of credited service for a retirement group.
 - (A)
 - (i) If a member purchases prior service and this Chapter is later amended to reduce the maximum years of service for which a member may receive credit, the County must refund to the member that portion of the retirement contributions made to purchase the unneeded prior service, with interest, if the member requests a refund before the member retires.
 - (ii) Notwithstanding clause (i), the County must refund to a Group G member whose retirement is effective during the period March 1, 2000, through November 1, 2001, that portion of the member's retirement contributions made to purchase the unneeded prior service, with interest, if the member requests a refund before or after the member retires.
 - (B) The County must refund the retirement contributions used to purchase excess service credits only if the member's total credited service, excluding sick leave, exceeds the new maximum for the member's retirement group on the date that the amendment reducing the maximum years of credited service became effective.
 - (C) The County must refund to the member, with interest, that portion of the payment made to purchase any prior service that exceeds the maximum credited service for the employee's retirement group. The County must determine the amount of the refund based on the member's total credited service, excluding sick leave, on the effective date of the amendment to the County Code that reduced the maximum years of service. In this subsection "payment" means the lump sum amount, determined at the time of purchase on an actuarial or flat payment basis, less any interest paid by the member or any contributions that were previously refunded.

- (D) Under this subsection, the County must pay interest in the same manner and amount as for a member's accumulated contributions under subsection (b). To calculate interest on a refunded payment, the County must assume that the member paid the amount in full when the service was purchased.
 - (E) The County must pay the proper refund to the member after the member's retirement begins.
- (d) *Voluntary elected officials' participant contributions.*
 - (1) An elected officials' participant may voluntarily contribute up to an additional 7% of regular earnings to the elected officials' plan. Voluntary elected officials' participant contributions must be deducted from the regular earnings of the elected officials' participant.
 - (2) An elected officials' participant may:
 - (A) Change the amount of the voluntary elected officials' participant contributions;
 - (B) Cease making voluntary elected officials' participant contributions; or
 - (C) Withdraw all or part of the voluntary elected officials' participant contributions and the earnings thereon under procedures established in executive regulation under method (1).
- (e) *Treatment of elected officials' participant contributions.*
 - (1) Required elected officials' participant contributions must be allocated to the required elected officials' participant contributions account established for that elected officials' participant. Voluntary elected officials' participant contributions must be allocated to the voluntary elected officials' participant contributions account established for that elected officials' participant. In addition, amounts allocated to the required elected officials' participant contributions account and voluntary elected officials' participant contributions account of an elected officials' participant must be further allocated to sub-accounts to reflect the proportionate amount of such accounts invested in each of the applicable investment funds by that elected officials' participant. As of each valuation date, the chief administrative officer must value the assets of the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account on a current market value basis.
 - (2) An elected officials' participant is always fully vested in the amount of the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account for that elected officials' participant.

Sec. 33-39A. Investment of contributions to the elected officials' plan.

(a) *Investment funds.*

- (1) An elected officials' participant must direct that contributions allocated to that participant's retirement accounts be invested in one or more of the investment funds selected by the Board for the retirement savings plan under Article VIII.
- (2) An elected officials' participant may allocate investments in the investment funds in any amounts or multiples permitted by the Board in the retirement savings plan.
- (3) An elected officials' participant's direction of investment must remain in effect until the elected officials' participant changes the direction under subsection 33-39A(b). If an elected officials' participant does not provide a valid direction of investment, the account balances of that elected officials' participant, to the extent they are not governed by a valid direction of investment, must be invested in an appropriate investment option selected by the Board.

(b) *Change of allocation.*

- (1) An elected officials' participant may change the allocation of that elected officials' participant's account balances among the investment funds, in amounts and at times set by the Board for investments in the retirement savings plan. The change will be effective at times set by the Board for the retirement savings plan.
- (2) An elected officials' participant may designate that the change of the allocation among investment funds is effective as to:
 - (A) Only the elected officials' participant's account balances as of the effective date of the change; or
 - (B) Only the elected officials' participant's contributions and county contributions made after the effective date of the change; or
 - (C) Both a. and b.

Sec. 33-40. Employer contributions.

The county and each participating agency must pay to the board each fiscal year a normal contribution and, if necessary, an additional contribution to be known as unfunded accrued liability contribution. The actuary for the retirement system must prepare an actuarial valuation and report each year.

- (a) *Normal contribution.* The amount of normal contribution must at least match the contribution made by members each fiscal year but must not be less than the amount which could be provided by multiplying the latest published actuarial normal cost accrual rate, expressed as a percentage of covered payroll, times the payroll of covered members. The actuary for the retirement system must determine a single normal contribution, and, if necessary, an unfunded accrued liability contribution for each group which must be applicable to and payable by each participating agency. The normal contribution must be

determined by the actuary for the retirement system after each actuarial valuation as the percentage of the compensation of all members which is sufficient to cover the cost of benefits determined under an actuarial cost method acceptable under the United States Treasury Regulations with respect to qualified retirement plans after taking into account members' contributions.

- (b) *Unfunded accrued liability contribution.* The unfunded accrued liability contribution shall be the amount necessary to liquidate the base amount of the unfunded accrued liability and additions thereto, over not more than forty (40) years. The amount to liquidate annually shall be determined from the unfunded accrued liability published in the latest actuarial report. The base amount of unfunded accrued liability contributions payable by each participating agency shall be determined by the actuary on the basis of June 30, 1975, membership. Thereafter, the actuary shall determine additional unfunded accrued liabilities in excess of the June 30, 1975 base amount that emerge as the result of benefit improvements, salary increases or other applicable factors, which shall be applicable to and payable by each participating agency. The additional unfunded accrued liabilities shall be liquidated over not more than forty (40) years from date incurred.
- (c) *Additional contributions.* The county shall make such contributions as are required annually to provide benefits under subsections (d) and (e) of section 33-45. Any contributions made on behalf of an employee who ceases to be a member as the result of separation from the county service shall be used each fiscal year to accelerate the payment of any unfunded accrued liability or to fund retirement plan improvements.
- (d) *Elected officials' plan.* Subsections 33-40(a), (b), and (c) do not apply to the elected officials' plan. Instead, the following provisions apply:
 - (1) The county must contribute to the elected officials' plan in monthly installments, on behalf of each elected officials' participant, an amount equal to six (6) percent of the elected officials' participants' regular earnings. The county's elected officials' contributions are to be adjusted to take into account any forfeiture under subsection 33-40(d)(2)d. In determining the amount of the county elected officials' contributions, only an elected officials' participant's regular earnings earned while that elected officials' participant made required elected officials' participant contributions are counted.
 - (2) The Board must allocate the county elected officials' contributions made on behalf of each elected officials' participant to a county elected officials' contributions account the Board establishes for that elected officials' participant. In addition, amounts allocated to the county elected officials' contributions account must be further allocated to sub-accounts to reflect the proportionate amount of each account in each of the applicable investment funds.
 - (A) As of each valuation date, the Board must value the county elected officials' contributions account of each participant on a current market value basis.
 - (B) An elected officials' participant has a one hundred (100) percent vested interest in that elected officials' participant's county elected officials' contributions account after the elected officials' participant attains the

lesser of a full term of office or four (4) years of credited service. An elected officials' participant whose account balance in the county elected officials' contributions account is not one hundred (100) percent vested in accordance with the preceding sentence will nonetheless be one hundred (100) percent vested in that account balance from and after the effective date of a termination of the elected officials' plan.

- (C) An elected officials' participant who has a one hundred (100) percent vested interest in the county elected officials' contributions account of that elected officials' participant and ends employment with the county before the participant's normal retirement date may, at the elected officials' participant's request, receive the account balance in the county elected officials' contributions account in a single lump-sum payment. An elected official who chooses to withdraw the account balance in the county elected officials' contributions account must at the same time withdraw the account balances in the required and voluntary elected officials' participant contributions accounts, and if that elected officials' participant again participates in the elected officials' plan after the withdrawal, that elected officials' participant must complete the lesser of an additional four (4) years of credited service or a full term of office in order to vest in any county elected officials' contributions made after the withdrawal.
- (D) An elected officials' participant who ends employment with the county and who is not vested in any county contributions must forfeit the full account balance in the county elected officials' contributions account. If that occurs, the chief administrative officer must pay the participant, in a single lump-sum payment, the full account balances in the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account, less any indebtedness to the county government or the Montgomery County Employees Federal Credit Union. The chief administrative officer must consider all forfeitures arising under the elected officials' plan in determining the county elected officials' contributions and must use the forfeitures to reduce the amount of the county elected officials' contributions.

Sec. 33-41. Credited service.

(a) *Member's credited service.*

- (1) A member's credited service is the total service rendered under the employees' retirement system of Montgomery County, plus any credited service earned under the employees' retirement system of the State of Maryland and/or the Montgomery County police relief and retirement fund law plus any other credited service purchased or granted pursuant to this section.
- (2) However, credited service earned while an individual is a participant in the elected officials' plan must be used only for the purposes described in section 33-37(e) and section 33-55A. Credited service earned while an individual is a participant in the retirement savings plan under Article VIII must be used only as

provided in Section 33-37(i).

- (3) Credited service includes:
 - (A) The time during which a member receives service-connected disability benefits under article VI of this chapter; and
 - (B) Half the time during which a member receives non-service-connected disability benefits under article VI of this chapter.
- (4) An employee who is receiving disability benefits under article VI of this chapter will not be entitled to receive credited service for any period of time during which the employee participates in either the Montgomery County employees' retirement system or in another retirement system.
- (5) The Chief Administrative Officer must notify each eligible employee who attains 5 years of County service of the opportunity provided under this Section to purchase credited service. The Chief Administrative Officer must also notify each new employee that any person who transfers from State service or from a dual merit system position may be eligible to transfer credited service to the County retirement system.
- (6) Notwithstanding other provisions of this Section, a member must not be granted or permitted to purchase credited service for any period of actual or credited service under another retirement system if the member is receiving retirement benefits or has retained a vested right to retirement benefits from that system, unless federal law provides that the member must be permitted to purchase the credited service.
- (7) Member contributions paid under this Section to purchase credited service must not be treated as picked-up contributions.

(b) *Procedures for determining credited service.*

- (1) Full-Time Members. Service rendered during the full normal working time in a 12-month period, including paid authorized leave or other leave specifically provided here, will equal one year of credited service. The 12-month period referred to in the preceding sentence is the 12-month period that starts on the date (or the anniversary of the date) the employee first completed one hour of County service as a member.
- (2) Part-Time Members. Any member working less than the normal scheduled work week for full-time employees on a continuing basis shall receive one year of credited service for each 12-month period. The 12-month period referred to in the preceding sentence is the 12-month period that starts on the date (or the anniversary of the date) the employee first completed one hour of County service as a member.
- (3) Combined Full-Time and Part-Time Service.

- (A) Except to determine the date that benefits begin under subsection (b)(3)(B), service credits for any member who has a combination of part-time and full-time service must be determined as follows: Each 176 hours equals one month of credited service. Accumulated hours of 88 to 176 equals one month of credited service. An accumulation of less than 88 hours must not be credited, and excess hours must not be carried over from one fiscal year to the next. For both full-time and part-time members, one month's credit must be granted for service of 15 days or more in any one calendar month.
 - (B) For purposes of determining years of credited service to establish the date of commencement of benefits, credited service means service completed in accordance with paragraphs (b)(1) and (b)(2), plus any service granted or purchased under the retirement system. Years of credited service of less than one full year must be prorated. This subsection does not apply to members who retire before July 1, 1989 or to members who are elected officials on July 1, 1989, and who retire before December 3, 1990.
- (c) *Credit for service in the armed forces of the United States, state militia, or national guard.*
 - (1) A member who enters the armed forces of the United States, a state militia, or national guard and does not withdraw member contributions and interest must receive service credit for periods of active military service if the member:
 - (A) does not remain in the military service for more than 5 years;
 - (B) reports for County service or applies for reemployment and submits proof of military service:
 - (i) within 90 days after completing the military service; or
 - (ii) within 2 years after completing the military service, if the member was hospitalized or convalescing from an illness or injury incurred in, or aggravated during, the period of military service; and
 - (C) makes up employee contributions missed during the period of military service.
 - (2) A member who does not make up all of the employee contributions missed during the period of military service must not receive credited service for a proportion of the total period of military service equal to the ratio of the actuarial value of the remaining missed employee contributions to the actuarial value of the total employer and employee contributions for the period of military service.
 - (3) The participating agency from which a member enters the military service must contribute on a current basis the funds necessary to purchase retirement service credit while the member is in the military service.

- (d) *Credited service as a fire alarm dispatcher, firefighter, or fire officer in Montgomery County.* Any member shall have the opportunity to obtain credit for any period of full-time paid service as a fire alarm dispatcher, firefighter or fire officer in a county fire department (including the Takoma Park fire department) or as rescue service personnel in a county rescue squad if such service has not otherwise been credited. In order to receive credit for such service, the member shall pay, in a lump-sum or by extended payments, the full cost which shall be determined on an actuarial basis.
- (e) *Credited service for prior military service.*
 - (1) In this subsection, “uniformed services” means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service of the United States, and active duty service in the National Guard of any state of the United States.
 - (2) A member with 5 years of membership in the Employees Retirement System enrolled or re-enrolled on or after July 1, 1978, may obtain credited service for all or part of any military service in the uniformed services of the United States up to a maximum of 48 months. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for these service credits.
- (f) *Use of sick leave for credited service.* An employee whose retirement is effective on or after May 1, 1970, or who becomes vested on or after October 1, 1971, must receive credit toward retirement for any accumulated sick leave, up to a maximum of 4,224 hours. Each 176 hours of accumulated sick leave is equal to 1 month of credited service. Accumulated sick leave totaling less than 11 days must not be credited for retirement purposes. Accumulated sick leave totaling 11 to 22 days must be credited as 1 month of service for retirement purposes. An employee who transfers to the Retirement Savings Plan must receive credit toward retirement under the optional plan or integrated plan under Section 33-37(i) for the employee’s accumulated sick leave.
- (g) *Credited service for period of sick leave without pay.* Any member who is granted authorized sick leave without pay shall have the opportunity to obtain credited service for up to one (1) year of such absence. Before receiving credited service, the member shall pay both the member contributions and the county contributions on a current basis during the period of time on sick leave without pay.
- (h) *Transfers between the county retirement system and any public retirement system in the State of Maryland.* Under State law, a member entering or leaving County employment may transfer to or from any public retirement system in the State and receive credited service. A member may transfer to the County service credits accumulated under the previous system if the transfer complies with State law. If the member retires within 5 years after transferring to the County, the benefits payable for the transferred service are limited to the benefits that would have been payable under the other plan. The Chief Administrative Officer may provide by regulation adopted under method (3) procedures to assure favorable income tax treatment for members who transfer picked-up contributions between any of the eligible retirement systems. The two systems must have

a reciprocity agreement to share contributions under State law.

- (i) *Purchase of service credits for prior service with the federal government, a municipality, or another state.* A vested member may purchase prior service credits for any period of membership in the retirement system of the federal government, a municipality, or a state in the United States. Before receiving any of that credited service, the member must pay, in a lump sum or on an extended basis, both the employee and employer share of the actuarial value of the purchased prior service.
- (j) *Limitation on credited service.* Credited service purchased may not be used to qualify for vesting or retirement before at least 5 years of membership. Under Section 33-45(a), service credits transferred from a public retirement system in Maryland may be used to qualify for vesting.
- (k) *Purchase of part-time service credits.* A member may purchase service credit for any period of career part-time Montgomery County service or career part-time service in a participating agency. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for prior service credits.
- (l) *Purchase of prior State of Maryland and Montgomery County service credits.* A member may purchase service credits for any period of prior temporary or regular State of Maryland or Montgomery County service. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for prior service credits.
- (m) *Extended payments for purchase of credited service.* The chief administrative officer may approve a request for extended payment of monies due for purchase of credited service provided such period does not exceed five (5) years and an additional payment of at least six and one-half (6 1/2) percent per annum is assessed to date of full payment. In extenuating circumstances, the chief administrative officer may approve extension of the payment period.
- (n) *[Limitation on purchase of credited service.]* Except as required by state or federal law, an elected officials' participant may not be granted or permitted to purchase credited service for any purpose under the elected officials' plan.
- (o) Despite any other provision in this Section, a member must not transfer or purchase credited service for membership in a defined contribution or capital accumulation plan or in a plan with both defined contribution and defined benefit elements.

DIVISION 3. BENEFITS.

Sec. 33-42. Amount of pension at normal retirement date or early retirement date.

- (a) *Average final earnings.* For a full-time or part-time career member enrolled on or before June 30, 1978, and continuously enrolled to date of retirement, average final earnings shall be the regular earnings for the twelve-month period immediately preceding retirement, or any consecutive twelve-month period, whichever is greater. Whenever such member is on leave without pay status during part of the final twelve-month period of membership, average final earnings will be based on regular earnings for the last twelve (12) months during which the member was in full pay status or any consecutive twelve-month period, whichever is greater. Average final earnings for each employee who became a member on or before June 30, 1978, and remained a member continuously to the date of retirement, who has full-time service credits and is a part-time career member at time of retirement are the average hourly rate of earnings during the last twelve (12) months of membership or any consecutive twelve-month membership period, whichever is greater, multiplied by two thousand eighty (2,080). The average hourly rate for any twelve-month period is equal to the total regular earnings of the member, divided by the total number of hours worked during the period. Average final earnings for each employee who became a member on or after July 1, 1978, shall be the average of regular annual earnings of the member for the thirty-six-month period immediately preceding retirement, or any consecutive thirty-six-month period, whichever is greater. Whenever such employee is on leave without pay status during part of the final thirty-six-month period of membership, average final earnings will be based on regular earnings for the last thirty-six (36) months during which the member was in full pay status, or any consecutive thirty-six-month period, whichever is greater. Average final earnings for an employee who became a member on or after July 1, 1978, who has full-time service credits and is a part-time career member at the time of retirement will be the average hourly rate of earnings during the thirty-six-month period immediately preceding retirement or any consecutive thirty-six-month period, whichever is greater, multiplied by two thousand eighty (2,080). The average hourly rate for any thirty-six-month period is equal to the total regular earnings of the member divided by the total number of hours worked during the period.
- (b) *Amount of pension at normal retirement date.*
 - (1) Pension amount for an Optional Retirement Plan member.
 - (A) Except for a Group E, F, or G member, the annual pension for a member of the optional retirement plan who retires on a normal retirement must equal 2 percent of average final earnings multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.
 - (B) For a Group E member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year

must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

- (C) For a Group F member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4 percent of average final earnings multiplied by years of credited service, up to a maximum of 30 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 30 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.
- (D) For a Group G member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2 percent of average final earnings for each of the first 20 years of credited service completed, 3 percent of average final earnings for completion of any year, or prorated portion of a year of credited service, in years 21 through 24, 8 percent of average final earnings for the 25th year of credited service completed or for a prorated portion of credited service of more than 24 years up to the completion of 25 years, and 2 percent of average final earnings for each year or prorated portion of a year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits.

(2) Pension amount for an Integrated Retirement Plan member.

- (A) For a Group A, B, or H member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:
 - (i) From date of retirement to the month of attainment of Social Security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated.
 - (ii) From the month of attainment of Social Security retirement age: 1 ¼ percent of average final earnings up to the Social Security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings above the Social Security maximum covered compensation level at time of retirement, multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment provided in Section 33-44(c) from date of retirement to Social Security retirement age.
- (B) For a Group D member, the annual pension for a member of the

integrated retirement plan who retires on a normal retirement must be computed as follows:

- (i) From date of retirement to the month of attainment of social security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.
- (ii) From the month of attainment of social security retirement age: one percent of average final earnings up to the social security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings in excess of the social security maximum covered compensation level at time of retirement, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment provided in Section 33-44(c) from date of retirement to Social Security retirement age, if any.

(C) For a Group E member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

- (i) From the date of retirement to the month that the member reaches Social Security normal retirement age: 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.
- (ii) From the month the member reaches Social Security normal retirement age: 1.25 percent of average final earnings up to the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service to a maximum of 31 years plus sick leave credits, plus 2.4 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement for each of the first 25 years of credited service completed, and 2 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of

average final earnings above the Social Security maximum covered compensation in effect on the date of retirement. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.

- (D) For a Group F member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:
 - (i) From date of retirement to the month of attainment of Social Security retirement age: 2.4 percent of average final earnings multiplied by years of credited service up to a maximum of 30 years, plus sick leave credits. Credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 30 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.
 - (ii) From the month the member reaches Social Security normal retirement age: 1.65 percent of average final earnings up to the maximum of 30 years, and 1.25 percent of average final earnings for years in excess of 30 years, credited with sick leave, up to the Social Security maximum covered compensation in effect on the date of retirement, plus 2.4 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement, multiplied by years of credited service up to a maximum of 30 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 30 years must be credited at 2 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.
- (E) The County must compute the annual pension of a Group G member in the integrated retirement plan who retires on a normal retirement as follows:
 - (i) From the date of retirement to the month that the member reaches Social Security retirement age, the following percentages of average final earnings apply:
 - (a) 2 percent, for each of the first 20 years of credited service;

- (b) 3 percent, for years 21 through 24 of credited service;
 - (c) 8 percent, for the 25th year of credited service; and
 - (d) 2 percent, for each year of credited service of more than 25 years to a maximum of 31 years, plus sick leave credits; and
 - (e) 0 percent for years after year 31 (except sick leave credits referred to in subclause (d)).
 - (ii) From the month the member reaches Social Security retirement age, the percentages specified in clause (i) must be reduced, respectively, by the following percentages of average final earnings for the portion of any amount equal to or less than the Social Security maximum covered compensation in effect on the date of retirement:
 - (a) 0.625 percent, for each of the first 20 years of credited service;
 - (b) 0.9375 percent, for years 21 through 24 of credited service;
 - (c) 2.5 percent, for the 25th year of credited service; and
 - (d) 0.625 percent for each year of credited service of more than 25 years, to a maximum of 31 years, plus sick leave credits.
 - (iii) The County must increase the initial amount of a pension computed under (ii) above by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.
 - (iv) The County must prorate any portion of a year described in this subparagraph.
 - (3) Elected Officials' Plan. An elected officials' participant who retires on or after the normal retirement date of that elected officials' participant may receive that elected officials' participant's account balances in the elected officials' plan.
- (c) *Amount of pension at early retirement date and early retirement reduction factors.*
- (1) The yearly amount of pension for a member who retires on an early retirement date will be a percentage of the amount of normal retirement benefit which would have been paid on the basis of years of credited service including sick leave credits. The schedule of early retirement reduction factors is as follows:

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<i>Years Early</i>	<i>Reduction Factor</i>	<i>Percentage of Normal Retirement Benefit</i>
1	2%	98%
2	5%	95%
3	9%	91%
4	14%	86%
5	20%	80%
6	28%	72%
7	36%	64%
8	44%	56%
9	52%	48%
10	60%	40%

- (2) An elected officials' participant who retires before the normal retirement date of that elected officials' participant may receive the elected officials' participant's vested account balances in the elected officials' plan.
- (d) *Adjustment for pension payments previously paid.*
- (1) If a member who retires has previously retired and received pension payments, the number of years of prior service plus the number of years of service accrued after re-entering the retirement system will be used in computing the amount of pension at subsequent retirement.
- (2) If a member receives service connected disability pension payments, and subsequently returns to work and re-enters the retirement system within 5 years of the date that disability retirement commenced and prior to attaining age 55, if a group A or H member, or age 45 if a group B, E, F, or G member, the number of years of prior service, plus the number of years the member was on retirement, plus the number of years accrued after re-entering the system must be used in computing the amount of pension at subsequent retirement.
- (e) *Early retirement on full benefits.* Notwithstanding other provisions of this article, whenever a member's credited service plus age equals eighty-five (85), the member may elect early retirement and the early retirement reduction factors shall not apply, provided the member has at least thirty-five (35) years of credited service.
- (f) *Pension limitation.* Notwithstanding any other provision of this section, the initial retirement benefit as provided under this section for those employees enrolled or re-enrolled on or after July 1, 1978, when combined with the primary benefit from social security for which the member is eligible or will be eligible at social security retirement age, must not exceed 90 percent of member's average final earnings. This limitation does not apply to the cost-of-living adjustments received under subsection (c) of section 33-44.
- (g) *Calculation for members receiving benefits under the disability benefits program.*
- (1) When a member who receives disability benefits under Article VI reaches the

normal retirement date, the formula to calculate retirement benefits must be the same as in subsection (b)(1) and (b)(2)(A) and (B), except that the member's salary at the time of the disability, plus cost-of-living adjustments and annual increments, must be used to calculate the retirement benefits instead of average final earnings.

- (2) If a member who receives disability benefits under article VI of this chapter returns to employment covered by the retirement system under this chapter, at the time of actual retirement, the member must choose to receive retirement benefits:

- (A) Under this subsection; or
- (B) Under subsection (b) of this section.

(h) *Maximum annual contribution to elected officials' plan.*

- (1) Regardless of any other provision in this article, the annual addition described in this subsection that is allocated in any limitation year to the retirement accounts of any elected officials' participant must not exceed the lesser of:

- (A) \$40,000.00 (the "dollar limitation"), as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases; or
- (B) 100 percent of the participant's compensation (as defined below) (the "percent limitation").

- (2) For purposes of this subsection (h), the annual addition must be comprised of:

- (A) County elected officials' contributions; and
- (B) The lesser of:
 - (i) One-half of the total of required and voluntary elected officials' participant contributions allocated to the elected officials' participant's required and voluntary elected officials' participant contributions accounts; or
 - (ii) All of the required and voluntary elected officials' participant contributions allocated to the required and voluntary elected officials' participant contributions accounts in excess of six (6) percent of the elected officials' participant's compensation.

- (3) In this subsection (h), only:

- (A) for purposes of applying Section 415 of the Internal Revenue Code, "compensation" has the same meaning as provided in Treasury Regulation Section 1.415-2(d)(1), including amounts contributed at the election of the participant that are not includible in the gross income of the participant under Sections 125, 132(f)(4), 402(g)(3), or 457 of the Internal Revenue Code; and

- (B) The limitation year means the twelve (12) consecutive calendar months comprising the fiscal year of the county.
- (4) County elected officials' contributions that would be allocated to county elected officials' contributions accounts of elected officials' participants but for the limitations of this subsection (h), must be carried over to subsequent years and allocated in order of time to the county elected officials' contributions accounts which would have received such contributions but for the limitations set forth in this subsection (h). Amounts carried over must be allocated by the chief administrative officer to a suspense account that must be invested in a fixed income fund. Any earnings of the suspense account must be allocated ratably among the county elected officials' contributions accounts of all the elected officials' participants except as otherwise provided in this subsection (h).
- (5) For purposes of this subsection, the maximum dollar limitation of \$40,000.00 must be automatically increased as permitted by United States treasury regulations to reflect cost-of-living adjustments.
- (6) Multiple plan participation. This paragraph applies only for limitation years ending before January 1, 2000. Regardless of paragraph (1), the otherwise permissible annual benefits for any participant in the elected officials' plan who also participates in another qualified plan sponsored by the County or a participating agency that is a defined benefit plan must be further adjusted to the extent necessary to prevent disqualification of the plans under Section 415 of the Internal Revenue Code. Section 415 imposes the following additional limitations on the benefits payable to a participant in the elected officials' plan who also may be participating in another qualified plan of the county or any participating agency that is a defined benefit plan:
 - (A) If an individual is a participant at any time of both a defined benefit plan and a defined contribution plan maintained by the county or any participating agency, the sum of the "defined benefit plan fraction" and the "defined contribution plan fraction" for any limitation year must not exceed 1.0. In making this adjustment, the maximum benefit payable under the elected officials' plan must be reduced to the extent necessary to meet the multiple plan limitation.
 - (i) Defined Benefit Plan Fraction. The defined benefit plan fraction for any limitation year is a fraction, the numerator of which is the elected officials' participant's projected aggregate annual benefit under all defined benefit plans of the county or any participating agency determined at the close of the limitation year, and the denominator of which is the lesser of:
 - (a) 1.25 multiplied by the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code as applicable from time to time, or
 - (b) 1.4 multiplied by the defined benefit compensation limitation set forth in section 415(b)(1)(B) of the Internal

Revenue Code.

- (ii) **Defined Contribution Plan Fraction.** The defined contribution plan fraction for any limitation year is a fraction, the numerator of which is the sum of the annual additions to the elected officials' participant's accounts under all defined contribution plans of the county or any participating agency in such limitation year and for all prior limitation years, and the denominator of which is the sum of the applicable maximum amounts of annual additions which could have been made under section 415(c) of the Internal Revenue Code for the limitation year and for all prior limitation years of the participant's employment, assuming, for this purpose, that section 415(c) had been in effect during such prior year. The applicable maximum amount for any limitation year must be equal to the lesser of 1.25 multiplied by the dollar limitation in effect for each such limitation year under subsection 415(c)(1)(A) of the Internal Revenue Code, or 1.4 multiplied by twenty-five (25) percent of the elected officials' participant's total annual compensation for each such year.
 - (iii) For purposes of the above limitations, all defined benefit plans of the county or any participating agency, whether or not terminated, are to be treated as one defined benefit plan and all defined contribution plans of the county or any participating agency, whether or not terminated, are to be treated as one defined contribution plan. defined contribution plan.
- (i) **Maximum annual benefit.** Despite any other provision governing the retirement system, the annual benefit of a member must not exceed the limits of Internal Revenue Code Section 415 that apply to the plan. The Chief Administrative Officer must freeze or reduce a member's annual benefit to comply with this subsection.

Sec. 33-43. Disability retirement.

- (a) **Applicability.** This Section applies to:
 - (1) an application for disability benefits filed on or after March 1, 2000, by a member who is also a member of the Police Bargaining Unit;
 - (2) an application for disability benefits after May 18, 1995, by any other member; or
 - (3) a medical reevaluation of a disability retiree under subsection (g), regardless of when an application for disability benefits was filed.
- (b) **Definitions.** In this Section, the following words and phrases have the following meanings:
 - (1) *Applicant* means any member defined in subsection (a) who has filed an application for disability retirement under subsection (d)(1).

- (2) *Certified representative* means an employee organization certified under Section 33-79, 33-106, or 33-151 to represent a bargaining unit.
- (3) *Disability Arbitration Board* or *Board* means one of the 3 panels designated under subsection (m)(1) to review an appeal of the Chief Administrative Officer's final decision regarding an application for disability benefits filed by any member except a member of the Police Bargaining Unit.
- (4) *Disability Review Panel* or *Panel* means the 3 medical doctors appointed as Panel members by the Chief Administrative Officer in accordance with subsection (c).
- (5) *Medical doctor* means a doctor of medicine or osteopathy who has graduated from a medical school accredited by the American Medical Association and who is licensed to practice medicine in the State of Maryland.
- (6) *Medical specialty* means a field of medicine, such as orthopedic surgery or neurology, which requires specialized training and certification.
- (7) *Police Disability Arbitration Board* or *Police Board* means the 3 persons designated under subsection (m)(1) to review an appeal of a decision by the Chief Administrative Officer affecting a member of the Police Bargaining Unit's right to disability benefits.
- (8) *Residual functional capacity* means what the individual can still do, despite the individual's impairment. The County must give the term *residual functional capacity* the same meaning as the term is given by the U.S. Social Security Administration.
- (9) *Substantial gainful activity* means the ability to perform a substantial level of paid work that exists in significant numbers in the national economy. An individual is able to perform a substantial level of work if the individual is able to earn more than the U.S. Social Security Administration's current monthly earnings limit that applies to the individual's impairment. The County must give the term *substantial gainful activity* the same meaning as the term is given by the U.S. Social Security Administration.

(c) *Selection of the Disability Review Panel.*

- (1) The Chief Administrative Officer must appoint the 3 members of the Disability Review Panel from a list of 10 medical doctors agreed upon by the certified representatives and the County.
- (2) The Chief Administrative Officer must ensure that no 2 members of the Panel practice in the same medical specialty.
- (3) (A) The Chief Administrative Officer must appoint members under subsection (c)(1) for staggered 3-year terms. To implement the staggered terms, the Chief Administrative Officer must appoint the first member to a 3-year term, the second member to a one-year term, and the third member to a 2-year term. After these initial appointments, the Chief

Administrative Officer must appoint all members to 3-year terms, except for any member appointed under subsection (c)(6) to fill a vacancy created by a Panel member's death, disability, resignation, non-performance of duty or other cause.

- (B) After the Chief Administrative Officer appoints or reappoints a Panel member, the Chief Administrative Officer must promptly provide each certified representative with a copy of the document confirming the appointment.
 - (4) At the expiration of a Panel member's term, the Panel member is eligible for reappointment to a new 3-year term unless, at any time within 30 days to 60 days prior to the expiration of the term, a certified representative notifies the County and the other certified representatives or the County notifies the certified representatives that it objects to the reappointment of the Panel member. If there is no objection, the Panel member is eligible to serve an additional term or terms.
 - (5) In the event a Panel member declines to be reappointed to the Panel, a new medical doctor must be appointed by the Chief Administrative Officer from a list of 5 medical doctors agreed upon by the certified representatives and the County.
 - (6) If a vacancy on the Panel is created by a Panel member's death, disability, resignation, non-performance of duty or other cause, the Chief Administrative Officer must appoint a medical doctor to complete the Panel member's term. The Chief Administrative Officer must appoint the Panel member from a list of 5 medical doctors agreed upon by the certified representatives and the County.
 - (7) The County must pay each Panel member reasonable compensation, as determined by the Chief Administrative Officer, for his or her services.
- (d) *Disability retirement procedures.*
- (1) An application for disability retirement may be filed with the Chief Administrative Officer by:
 - (A) a member;
 - (B) a certified representative on behalf of a represented member or
 - (C) the department, office, or agency head under subsection (k).
 - (2) The Disability Review Panel must consider an application for disability retirement benefits filed by a member or a certified representative. The Panel must determine if an applicant is eligible for non-service-connected disability or service-connected disability in accordance with subsections (e)(2) through (4) and subsection (f).
 - (3) Subject to the limitations in subsection (f)(4)(E), the Panel may consider any information or material submitted by the applicant, the certified representative or the County.

- (4) Before the Panel meets to review an application for a member other than a member of the Firefighter/Rescuer Bargaining Unit, the Panel must advise each party of the deadline date for submitting information to the Panel. The Panel must allow a reasonable amount of time for the parties to submit additional information, and may extend the deadline at the request of either party for good cause shown.
- (5) Except for information from a member of the Firefighter/Rescuer Bargaining Unit, the Panel must not accept or consider information from a member if the information is received after the established deadline date unless the information is related to:
 - (A) the applicant's reinjury that occurred or was diagnosed after the deadline date; or
 - (B) a change in the applicant's medical condition that occurred or was diagnosed after the deadline date.
- (6) The Panel must meet as a body and review and consider all evidence submitted to it no later than 60 calendar days after the application is filed. A majority vote on a decision to take any action in accordance with the provisions of this Section will prevail. If only 2 Panel members participate in the decision-making process, the vote on a decision to take any action must be unanimous. No action may be taken upon a decision made by one Panel member.
- (7) Within 30 calendar days after the Panel's last meeting at which the application was considered, the Panel must issue a written recommendation to the Chief Administrative Officer regarding whether the applicant meets the criteria for disability retirement benefits for non-service-connected disability in accordance with subsections (e)(2), (3) and (4) or service-connected disability in accordance with subsection (f).
- (8) (A) If the Panel is unable to make a determination based on the evidence presented to it, the Panel may:
 - (i) direct the applicant to undergo a medical examination (including all relevant medical tests) by a medical doctor who is not a member of the Disability Review Panel; and
 - (ii) if required for the Panel to make a recommendation under Section 33-43(i)(2), request an independent vocational assessment.
- (B) The County must pay the cost of the examination and assessment.
- (C) The Panel must issue its written recommendation within 30 calendar days after the Panel receives the later of:
 - (i) the full report from the medical doctor who conducted the

examination; or

- (ii) the full report of the results of the independent vocational assessment.

- (9) Within 20 calendar days following receipt of the Panel's written recommendation, the Chief Administrative Officer or designee must issue a final decision regarding whether the applicant meets the criteria for disability retirement benefits for non-service-connected disability in accordance with subsection (e) or service-connected disability in accordance with subsection (f).
- (10) A disability retirement is effective on the date a member exhausts all accrued sick leave and accrued compensatory leave in excess of 80 hours, if any, or on the date the application is approved by the Chief Administrative Officer, whichever comes first.

- (e) *Non-service-connected disability retirement.* A member may be retired on a non-service-connected disability retirement if the member:

- (1) has 5 years of credited service;
- (2) is mentally or physically incapacitated for the further performance of duty as the result of an illness or injury incurred after enrollment as a member, the incapacity is not due to the member's willful negligence, and the incapacity is likely to be permanent. In extenuating circumstances, the Chief Administrative Officer may waive the requirement that a member's incapacity is likely to be permanent and may approve a temporary disability retirement for one or more one-year periods until the incapacity is either removed or it becomes apparent that it is likely to be permanent;
- (3) is not eligible for service-connected disability retirement; and
- (4) is unable to productively perform the duties of another available position for which qualified.

- (f) *Service-connected disability retirement.*

- (1) A member may be retired on a service-connected disability retirement if:
 - (A) the member is totally incapacitated for duty or partially and permanently incapacitated for duty as the natural and proximate result of an accident occurring, or an occupational disease incurred or condition aggravated while in the actual performance of duty;
 - (B) the incapacity is not due to the member's willful negligence;
 - (C) the incapacity is likely to be permanent; and
 - (D) the member is unable to perform the duties of either:
 - (i) the occupational classification to which assigned at the time

disability occurred; or

- (ii) a position of comparable status within the same department for which the member is qualified.
- (2) In extenuating circumstances, the Chief Administrative Officer may waive the requirement that a member's incapacity is likely to be permanent and may approve a temporary disability retirement for one or more one-year periods until the incapacity is either removed or it becomes apparent that it is likely to be permanent.
- (3) A Group G member who has an occupational disease that is compensable under Section 9-503 of the Maryland Workers' Compensation Act is entitled to receive service-connected disability benefits if:
 - (A) the employee became a member of Group G on or after July 1, 1999, and did not use, or get terminated for using tobacco products for any purpose either on-duty or off-duty while employed by the County as a Group G member; or
 - (B) the employee became a member of Group G before July 1, 1999 and:
 - (i) did not use tobacco products more than 3 times for any purpose while on-duty after June 30, 2000;
 - (ii) if a tobacco user, completed a tobacco-cessation program approved by the County; and
 - (iii) completed a cardiovascular fitness assessment and evaluation program established by the County (or by the County and the certified representative, for members of the Firefighter/Rescuer Bargaining Unit) and make a good faith effort to follow the health and fitness recommendations that resulted from the cardiovascular assessment.
- (4) *Alternative placement incentive.*
 - (A) The Chief Administrative Officer may offer a 5-percent salary increase to an employee who:
 - (i) is not a member of the Police Bargaining Unit;
 - (ii) is eligible to receive a service-connected disability retirement; and
 - (iii) accepts an alternative position in the County government for which the employee is qualified.
 - (B) The employee's salary in the alternative position must not exceed the maximum salary of the pay grade assigned to the position.

- (C) A member of the Office, Professional and Technical Bargaining Unit or the Service, Labor and Trades Bargaining Unit who accepts an alternative placement incentive is not eligible to apply for a service connected disability retirement based on the disability for which the alternative placement was made.
- (D) A Group G member who accepts an alternative placement incentive:
 - (i) must remain a Group G member for the remainder of the member's County employment; and
 - (ii) is not eligible for a service-connected disability retirement based on the medical condition that existed at the time the alternative placement was made.
- (E) If a member applies for service-connected disability retirement instead of accepting an alternative placement incentive, the member's failure to accept the incentive must not:
 - (i) be included in the information considered by the Disability Review Panel, Chief Administrative Officer, or Disability Arbitration Board;
 - (ii) be considered at any time by the Disability Review Panel, Chief Administrative Officer, or Disability Arbitration Board; or
 - (iii) effect the member's eligibility for service-connected disability retirement or the amount of the service-connected disability pension benefit.
- (g) *Medical reexamination of disability retiree.* The Chief Administrative Officer may require a member receiving disability pension payments to undergo a yearly physical examination during the 5-year period following retirement, and once in every 3-year period thereafter, until age 55 if a member of group B, E, F, or G, or age 60 if a member of group A or H. The Chief Administrative Officer must review the findings of the physical examination and take appropriate action, which may include submitting the results of the evaluation to the Disability Review Panel for a redetermination as to whether the individual qualifies for disability benefits in accordance with subsection (d). If a member refuses to submit to the examination, the Chief Administrative Officer may reduce or discontinue pension payments.
- (h) *Amount of pension at non-service-connected disability retirement.*

A member who retires on non-service-connected disability retirement must receive an annual pension equal to the greater of:

 - (1) the amount calculated under Section 33-42(b)(1); or
 - (2) 33 _ percent of final earnings.
- (i) *Amount of pension at service-connected disability retirement.*

- (1) The County must pay a member, other than a Group G member, who retires on service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), subject to the following exceptions:
 - (A) the County must substitute final earnings for average final earnings; and
 - (B) the pension must be at least 66 _ percent of the member's final earnings.
- (2) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), except that the County must substitute final earnings for average final earnings.
- (3) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 70 percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that the member's service-connected disability is severe enough to meet the Social Security Administration's requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security benefits to be eligible for benefits under this subsection.
 - (A) The Panel must base its determination of whether or not an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational expert that considers the member's age, education, work experience, transferable skills, and residual functional capacity.
 - (B) The Panel must determine the member's residual functional capacity and provide this information to the independent vocational expert.
 - (C) A Panel determination that the member's service-connected disability is severe enough to be considered a disability by the Social Security Administration is not a recommendation that the member is entitled to, or should be granted, a disability benefit by the Social Security Administration.
 - (D) If a member has already been granted disability benefits by the U.S. Social Security Administration when the member applies for a service-connected disability pension, the County must pay the member a pension of at least 70 percent if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.
- (4) The County must pay a Group G member who retires on a service-connected

disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 52 ½ percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that:

- (A) the member meets the standards to receive a service-connected disability benefit under subsection (f); and
 - (B) the member is not eligible to receive a benefit under subsection (i)(3).
- (5) (A) The County must increase the service-connected disability pension benefit of a Group G member calculated under Section 33-42(b)(1), from a benefit of at least 52 ½ percent to a benefit of at least 70 percent, if:
- (i) the U.S. Social Security Administration awards disability benefits to the member;
 - (ii) the member submits all relevant information about the award of disability benefits from the Social Security Administration to the Disability Review Panel within 60 days after the member receives the award;
 - (iii) the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel originally awarded the member a service-connected disability benefit; and
 - (a) the member applies for disability benefits with the Social Security Administration within 90 days after the date on which the Chief Administrative Officer notified the member that the amount of the service-connected disability pension benefit would be calculated under Section 33-42(b)(1), but at least 52 ½ percent; or
 - (b) the Chief Administrative Officer awards a service-connected disability pension benefit calculated under Section 33-42(b)(1), but at least 52 ½ percent, to the member between March 1, 2000, and December 1, 2003, and the member applies for disability benefits with the Social Security Administration no later than February 29, 2004.
- (B) For a member who qualifies for an increased pension benefit under subsection (5)(A) above, the County must increase the member's service-connected pension retroactively to the date on which the pension began.
- (6) Under this subsection, "final earnings" for a Group F or G member who is participating in a job-sharing program under a collective bargaining agreement between the County and a certified representative means the regular earnings that

the member would have received if the member had been employed on a full-time basis on the last date of active service.

(j) *Adjustment or cessation of disability pension payments.*

- (1) If a member receiving service-connected disability pension payments reaches the first day of the month following normal retirement date, the amount of pension then payable must not be less than the amount that would have been payable under the provisions of Section 33-45(c), if the member had terminated service on the date disability pension commenced and had not elected a return of member contributions with credited interest.
- (2)
 - (A) The Chief Administrative Officer may reduce the amount of the disability pension payments of a member who:
 - (i) has not reached the normal retirement date; and
 - (ii) is engaged in, or able to engage in, an occupation that pays more than the difference between the amount of the disability pension payments [and] the current maximum earnings of the occupational classification from which the employee was disabled.
 - (B) For a member other than a Group F member who meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the amount of the disability pension payments plus the amount that the employee earned or is able to earn equals the maximum earnings of the occupational class from which the member was disabled.
 - (C) For a Group F member who receives a non-service connected disability pension and who meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the amount of the disability pension payments plus the amount the employee earned or is able to earn equals 120 percent of the maximum earnings of the occupational class from which the employee was disabled.
- (3) If the earnings capacity of a disability retiree changes, the Chief Administrative Officer may change the amount of the disability retirement pension. For the purpose of this subsection, "disability pension" is the amount of pension payable without election of a pension payment option.
 - (A) For a disability retiree other than a group F member, the Chief Administrative Officer must ensure that the amount of the revised pension does not exceed:
 - (i) the original disability retirement pension plus cost-of-living increases; or

- (ii) an amount that, when added to the amount the member earns or is able to earn, equals the maximum earnings of the occupational classification from which the member was disabled.
- (B) For a Group F member who receives a non-service connected disability pension, the Chief Administrative Officer must ensure that the amount of the revised pension must not exceed:
 - (i) the original disability retirement pension plus cost-of-living increases; or
 - (ii) an amount that, when added to the amount that the member earns or is able to earn, equals 120 percent of the maximum earnings of the occupational classification from which the member was disabled.
- (4) If a member receiving disability pension payments fails or refuses to supply the Chief Administrative Officer whatever information is determined necessary to make a decision on the amount of retirement pay legally due, the member's pension payments must be discontinued until the member submits the requested information.
- (5) If a member receiving disability pension payments returns to the service of the County or is appointed or elected to any office, the salary or compensation of which is paid wholly or in part by the County, pension payments will cease, and the individual will again become a member of the retirement system and resume member contributions.
- (6) For those employees enrolled or re-enrolled on or after July 1, 1978, the member's disability retirement benefit for any month must be integrated with the primary disability benefits received from social security and the total benefits from both sources must not exceed 100% of the average final earnings of the member; provided, however, that this limitation does not apply to the cost-of-living adjustments issued pursuant to Section 33-44(c).
- (7) The Chief Administrative Officer must not reduce the service-connected disability pension payments of a Group F or G member by income received from sources other than County Government employment.
- (k) *Administrative disability retirement.* Whenever any member becomes disabled or incapacitated and is demonstrably not capable of performing the duties and responsibilities of the position to which assigned at an acceptable level of competence for medical reasons, the member must be notified by the head of the department, office or agency that in consideration of the medical condition, a disability retirement application should be initiated. If the member fails or refuses to make an application for disability retirement, the department, office or agency head may initiate a disability retirement application on behalf of the member. All pertinent information, including the member's attendance record, job performance record and medical record, must be transmitted to the Disability Review Panel.

(l) *Appeal procedures.*

- (1) An applicant who is a member of the Police Bargaining Unit or the certified representative of the Police Bargaining Unit may appeal a decision of the Chief Administrative Officer that affects the member's right to disability benefits to the Police Disability Arbitration Board. An applicant who is not a member of the Police Bargaining Unit, or the certified representative on behalf of the applicant, may appeal the written decision of the Chief Administrative Officer to one of 3 Disability Arbitration Boards. An applicant must file an appeal within 20 calendar days of the date on which the applicant receives the Chief Administrative Officer's decision.
- (2) The Police Disability Arbitration Board must consider appeals filed by members of the Police Bargaining Unit. The 3 Disability Arbitration Boards must consider all other appeals on a rotating basis in the order in which the County receives the appeals.
- (3) After an applicant files an appeal, the appropriate Disability Arbitration Board or Police Disability Arbitration Board with whom the appeal is filed must convene within a reasonable time and consider the appeal.
- (4) The appeal and judicial review proceedings are governed by the Maryland Uniform Arbitration Act, except that a Board decision must not be vacated on the ground that the applicant who filed the appeal is not a bargaining unit member and did not agree to arbitrate the appeal.
- (5) The Chairpersons of the Disability Arbitration Boards and Police Disability Arbitration Board must, for the appeals before them:
 - (A) decide all issues on prehearing procedures, including any issue related to discovery; and
 - (B) rule on all issues of law that arise before the hearing, unless ruling on the issue would decide the appeal.
- (6) The Disability Arbitration Boards and Police Disability Arbitration Board must render decisions quickly. The Disability Arbitration Boards and Police Disability Arbitration Board should issue written decisions on appeals within 30 calendar days after the hearing or after receiving any post-hearing briefs.

(m) *Disability Arbitration Boards and Police Disability Arbitration Board.*

- (1) (A) The County Executive must appoint a different neutral arbitrator to be the Chairperson of each Disability Arbitration Board. The County Executive must select the neutral arbitrators from a list of 6 arbitrators agreed upon by the County and the certified representatives that represent all bargaining units except for the Police Bargaining Unit. To the extent possible, the 6 neutral arbitrators on the list should be experienced in law and occupational medicine. The appointment of the Chairperson of each Disability Arbitration Board must be confirmed by the County Council. The County must give each certified representative

a copy of the Council resolution confirming the appointment or reappointment of each Chairperson promptly after the Council's action.

- (B) The County Executive must appoint a neutral arbitrator to be Chairperson of the Police Disability Arbitration Board. The neutral arbitrator must be selected by the County and the certified representative of the Police Bargaining Unit either by agreement or through the processes of the American Arbitration Association. To the extent possible, the neutral arbitrator should be experienced in law and occupational medicine. The appointment of the Chairperson of the Police Disability Arbitration Board must be confirmed by the County Council
- (2) Each neutral arbitrator appointed by the County Executive under paragraph (1) must serve for a term of 3 years. At the expiration of the arbitrator's term, the arbitrator is eligible for reappointment to a new 3-year term unless, at any time within 30 to 60 days prior to the expiration of the 3-year term, either a certified representative gives written notice to the County or the County gives written notice to the certified representatives that it objects to the neutral arbitrator serving another term. If no objection is filed, the arbitrator is eligible for appointment to an additional term.
 - (3) If the neutral arbitrator declines to be reappointed, dies, resigns, or for other cause is unable or ineligible to serve on one of the Disability Arbitration Boards or the Police Disability Arbitration Board, a new arbitrator must be appointed by the County Executive under paragraph (1).
 - (4) The County must pay all reasonable fees and expenses of the arbitrators, as determined by the Chief Administrative Officer, except that a certified representative representing an applicant who is a member of the Office, Professional or Technical or Service, Labor and Trades Bargaining Unit must pay any fee resulting from the cancellation of a scheduled hearing if the certified representative:
 - (A) causes a hearing to be canceled and the application remanded to the Disability Review Panel; or
 - (B) causes a hearing to be canceled and rescheduled on a later date.
 - (5) The applicant, or the certified representative on behalf of the applicant, must designate an individual to serve as a member of the Disability Arbitration Board that will consider and decide the applicant's appeal. The applicant must designate an individual to serve as a member of the Police Disability Arbitration Board. The Chief Administrative Officer must designate an individual to serve on the Disability Arbitration Board or Police Disability Arbitration Board that will consider and decide the applicant's appeal. The applicant, or the certified representative on behalf of the applicant, and the County, respectively, may designate Board members on a case-by-case basis according to each party's chosen procedure. There must be no restriction on who may serve as the designee of the applicant or the County, except that no member of the Board that will

consider and decide an appeal may be involved in, or be a witness to, any matter that is before that Board.

- (6) Each party, including participating agencies, must be responsible for the fees and expenses of its respective members. Each party, including participating agencies, must also be responsible for its own witness fees and expenses.

Sec. 33-44. Pension payment options and cost-of-living adjustments.

(a) *Pension payment options.*

- (1) A member may elect an optional form of pension actuarially equivalent to the normal form of retirement pension otherwise payable, unless the member qualifies for a non-service-connected disability retirement before reaching the early retirement date. The Chief Administrative Officer must not consider the health condition of the member when deciding what is “actuarially equivalent”.
- (2) A member who qualifies for non-service connected disability retirement on or after reaching the early retirement date may elect a pension payment option.
- (3) A member who qualifies for a service-connected disability retirement may elect a pension payment option, regardless of age and credited service.
- (4) To elect a pension payment option, the member must file the appropriate form at least one month before the normal, early, or disability retirement date.
- (5) The pension payment option must take effect on the member's retirement date and is void if the member or the named beneficiary dies before that date.
- (6) The following forms of pension options are available:
 - (A) Ten-Year Certain and Continuous. The member will be paid a monthly income until death, with payments continued to the designated beneficiary until a total of one hundred twenty (120) monthly payments have been made. If the designated beneficiary dies before the end of the ten-year certain period, payments will be made to the contingent beneficiary. If the designated beneficiary and contingent beneficiary predecease the retiree, the retiree's estate shall be paid the amount of money representing the value of the annuity as of the date of death of the retiree. This option shall be the normal form of retirement pension for members enrolled before July 1, 1978, and continuously enrolled to date of retirement.
 - (B) Cash Refund Pension Option (available to members who were members of the employees' retirement system of the state on August 15, 1965). If a member dies before the total pension payments made or due equal the present value of the pension determined on the member's retirement date, the difference will be paid to the member's beneficiary.
 - (C) Joint and Survivor Pension Option.

- (i) Under this option, the County must make pension payments in an adjusted amount to the member during the member's lifetime and, at the member's death, make pension payments to the designated beneficiary (spouse, domestic partner, or children only) who survives. The County must make the pension payments to the surviving beneficiary for the rest of the beneficiary's lifetime [pension payments] in the amount payable to the member or other amount elected by the member, but not less than 10 percent of the amount payable to the member.
 - (ii) Upon the death of both the member and the beneficiary, a death benefit must be paid in the same manner as is provided under the normal form of retirement pension for which the member had been eligible.
 - (iii) Pop-up Option. At retirement, the member may elect the pop-up variation of a joint and survivor option with an appropriate actuarial reduction. Under this option, if the member and designated beneficiary divorce or the designated beneficiary dies before the member dies, the member's monthly payments for the rest of the member's life must "pop up" to the amount that they would have been if the member had elected the modified cash refund annuity at retirement.
 - (D) Modified Cash Refund Annuity. Lifetime pension payments will be payable to the member. If a member dies before receiving benefits in an amount equal to member contributions plus credited interest the difference will be payable to the designated beneficiary. This option shall be the normal form of retirement pension for members enrolled on or after July 1, 1978.
- (b) *Voluntary adjustment of pension payment by a member who retires before qualifying to receive social security benefits.*
- (1) A member may elect to receive an actuarial equivalent benefit of a certain level of pension payments until normal social security payments begin and an adjusted level of payments after normal social security payments begin. A member may elect these adjustments to receive a more uniform total income from both sources.
 - (2) A member who elects to receive adjusted levels of pension payments under subsection (1) above must also choose one of the forms of pension payment options described in subsection (a)(6).
 - (3) If a member dies, the County must pay the pension benefit to the member's designated beneficiary in the form elected by the member under subsection (a)(6).
- (c) *Cost-of-living adjustment.* A retired member or beneficiary, including the surviving

spouse or domestic partner of a group D member or other beneficiary who survives the member under a pension option or who is otherwise eligible to receive benefits, must receive an annual cost-of-living adjustment in pension benefits.

- (1) Each retired member or beneficiary shall have a cost-of-living base which shall be the Consumer Price Index most recently preceding the date of the member's retirement or death.
 - (2) The Consumer Price Index to be used for the fiscal year in which the cost-of-living adjustment is payable shall be the index calculated for the month last preceding the end of the fiscal year immediately preceding the fiscal year in which the adjustment is to be effective.
 - (3) The percentage cost-of-living adjustment of pension benefits must be obtained by dividing the most recent index determined under paragraph (2) by the next preceding index multiplied by 100 less 100.
 - (A) A member enrolled before July 1, 1978, must receive the full cost-of-living adjustment.
 - (B) A member enrolled on or after July 1, 1978, must receive 100 percent of the change in the consumer price index up to 3 percent, and 60 percent of any change in the consumer price index greater than 3 percent, up to a total adjustment of 7 ½ percent in any year. The 7 ½ percent annual limit does not apply to:
 - (i) a retired member who is disabled; or
 - (ii) a pensioner aged 65 or older for a fiscal year beginning after the date the pensioner reaches age 65.
 - (4) For the purpose of this section, "Consumer Price Index" shall mean, beginning January 1, 1978, the Consumer Price Index for All Urban Consumers issued for the Washington, D.C. Metropolitan Area (all items) as published by the United States Department of Labor, Bureau of Labor Statistics (for months before 1978, the Consumer Price Index published previously for urban wage earners and clerical workers for such months shall be applicable.)
 - (5) Pension benefits are subject to decreases in the Consumer Price Index. In no instance, however, shall a retired member or beneficiary receive less than the amount of pension benefits for which eligible at the time of the member's retirement.
- (d) *Applicability of cost-of-living adjustments to surviving spouses or domestic partners of group D members.* Effective July 1, 1973, the provisions of subsection (c) apply to an eligible surviving spouse or domestic partner of a group D member. The cost-of-living adjustment for the surviving spouse or domestic partner of a group D member who retired or died before July 1, 1970, must be based on the Consumer Price Index published as of August 15, 1955. The cost-of-living adjustment for the surviving spouse or domestic partner of a group D member who was an active member on June 30, 1970, and who

retired or died on or after July 1, 1970, must be based on the Consumer Price Index published as of the date of the member's retirement or death, whichever is earlier.

- (e) *[Applicability of cost-of-living adjustments to elected officials' plan.]* Cost-of-living adjustments do not apply to the elected officials' plan.
- (f) *Distributions from the elected officials' plan.* The chief administrative officer must pay an elected officials' participant's account balances in the elected officials' plan upon normal retirement or withdrawal of vested county contributions under the provisions of this subsection.
 - (1) Normal Method of Distribution. Unless the elected officials' participant elects an option under paragraph (2), the normal method of distribution must be a variable annuity that reflects investment gains and must be paid for the elected officials' participant's life.
 - (2) Optional Methods of Distribution. An elected officials' participant may choose to have the account balances paid to that elected officials' participant in one of the following optional methods:
 - (A) A single, lump-sum cash payment.
 - (B) A joint and survivor annuity. A joint and survivor annuity as used in this subsection means an annuity payable for the life of the elected officials' participant, with a survivor's annuity payable for the life of the spouse or domestic partner of the elected officials' participant in an amount at least equal to one-half of the amount of the annuity payable during the joint lives of the elected officials' participant and the spouse or domestic partner of the elected officials' participant, and which is the actuarial equivalent of a single annuity for the life of a participant.
 - (C) A single-life annuity that will be payable to the elected officials' participant during the life of that participant. If the elected officials' participant dies before receiving an amount equal to the required and voluntary elected officials' participant contributions account balances, including picked-up contributions, the difference must be paid to the beneficiary of the elected officials' participant.
 - (D) A life annuity with a ten-year certain option. This option provides an adjusted pension payable as long as the elected officials' participant lives, but guaranteed for a period of ten (10) years beginning on the date the payment of the account balances is to begin. If an elected officials' participant dies before expiration of the guaranteed period, payment is continued to the beneficiary at the same rate. If the beneficiary dies after having received at least one (1) payment while further payments are due, the further payments are made to a person designated by the elected officials' participant as a contingent beneficiary, or, in the absence of a contingent surviving beneficiary, the commuted value of the payments is paid to the estate of the last surviving beneficiary in a single lump-sum.

- (E) An annuity that provides gradually increasing pension payments, based on the elected officials' participant's life expectancy at the time of retirement. The payments are made for the life of the elected officials' participant.
 - (F) Payment of the account balances of the elected official participant in the form of as nearly equal periodic payments as the market will allow, over a period not exceeding the lesser of the joint life expectancy of the elected officials' participant and the elected officials' participant's beneficiary or twenty (20) years.
 - (3) If benefits under the elected officials' plan are payable under any method other than the lump sum method, the chief administrative officer may utilize the account balances of the elected officials' participant to buy an annuity contract from an insurance company authorized to do business in the State of Maryland. The contract must provide for payment in the method the elected officials' participant chose.
 - (4) The county executive may adopt regulations under method (3) to provide a procedure for an elected officials' participant to choose an alternate method of distribution.
- (g) *Required commencement of benefit payments.* The distribution of an elected officials' participant's retirement benefits must be made no later than April 1 of the calendar year following the later of the calendar year in which the elected officials' participant attains age seventy and one-half (70 1/2) or the calendar year in which the elected officials' participant retires. In the alternative, the payment of benefits to an elected officials' participant must begin not later than such April 1 under a method of payment that, in accordance with the applicable United States Treasury Regulations, provides for distribution of the elected officials' participant's benefits over:
- (1) The life of the elected official's participant;
 - (2) The lives of the elected officials' participant and the elected officials' participant's designated beneficiary;
 - (3) A period not extending beyond the life expectancy of the elected officials' participant; or
 - (4) A period not extending beyond the life expectancy of the elected officials' participant and the elected officials' participant's designated beneficiary.
- (h) *Period for distribution of death benefits of a retired elected officials' participant who was receiving benefits.* If the distribution to a retired elected officials' participant has commenced in accordance with the second sentence of subsection 33-44(g) and the elected officials' participant dies before the elected officials' participant's entire benefit has been distributed to that elected official's participant, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired elected officials' participant's death.

- (i) *Period for distribution of death benefits of an elected officials' participant who was not receiving benefits.*
 - (1) If an elected officials' participant dies before the payment of the benefits under the elected officials' plan has commenced, the benefits must be distributed within five (5) years after the elected officials' participant's death; however, the five-year rule does not apply if:
 - (A) Any portion of the elected officials' participant's benefit is payable to, or for the benefit of, a designated beneficiary;
 - (B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and
 - (C) The distributions commence no later than one (1) year after the date of the elected officials' participant's death, or such later date which the secretary of the treasury may, under regulations, prescribe. Also, the five-year rule does not apply if:
 - (i) The portion of the elected officials' participant's benefit to which the surviving spouse or domestic partner is entitled must be distributed over the life of the surviving spouse or domestic partner, or over a period not extending beyond the life expectancy of the surviving spouse or domestic partner; and
 - (ii) The distributions commence no later than the date on which the elected officials' participant would have attained age seventy and one-half (70 ½).
 - (2) For purposes of subsections (f), (g), (h), and (i), the life expectancy of an elected officials' participant and the elected officials' participant's spouse or domestic partner may be recalculated each year. Also, for purposes of subsections (f), (g), (h), and (i), any amount paid to a child must be treated as if it had been paid to the surviving spouse or domestic partner of an elected officials' participant if the amount becomes payable to the surviving spouse or domestic partner of an elected officials' participant when the child reaches the age of majority (or other designated event permitted under applicable Treasury Regulations).
- (j) *Required commencement of benefit payments.* The distribution of a member's retirement benefit must be made, or must begin, no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 1/2) or the calendar year in which the member retires. In the alternative, the payment of benefits to a member must begin not later than such April 1 in accordance with applicable United States Treasury Regulations over:
 - (1) The life of the member;
 - (2) The lives of the member and the member's designated beneficiary;

- (3) A period not extending beyond the life expectancy of the member; or
 - (4) A period not extending beyond the life expectancy of the member and the member's designated beneficiary.
- (k) *Period for distribution of death benefits of a retired member who was receiving benefits.* If the distribution to a retired member has commenced in accordance with the second sentence of subsection 33-44 (j) and the member dies before the member's entire benefit has been distributed to the member, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired member's death.
- (l) *Period for distribution of death benefits of a member who was not receiving benefits.*
- (1) If a member dies before the payment of the benefit has commenced, the benefit must be distributed within five (5) years after the member's death; however, the five-year rule does not apply if:
 - (A) Any portion of the member's benefit is payable to, or for the benefit of, a designated beneficiary;
 - (B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and
 - (C) The distributions commence no later than one (1) year after the date of the member's death, or such later date which the secretary of the treasury may, under regulations, prescribe.
 - (2) Also, the five-year rule does not apply if:
 - (A) The portion of the member's benefit to which the surviving spouse or domestic partner is entitled will be distributed over the life of the surviving spouse or domestic partner, or over a period not extending beyond the life expectancy of the surviving spouse or domestic partner; and
 - (B) The distributions commence no later than the date on which the member would have attained age seventy and one-half (70 1/2).
 - (3) For purposes of this subsection, the life expectancy of a member and the member's spouse or domestic partner may be recalculated each year. Also, for purposes of this subsection, any amount paid to a child must be treated as if it had been paid to the surviving spouse or domestic partner of a member if the amount becomes payable to the surviving spouse or domestic partner of a member when the child reaches the age of majority (or other designated event permitted under applicable treasury regulations).
- (m) *Actuarial assumptions.* The actuarial assumptions that will be used to determine the equivalence of various optional benefits are:

- (1) Net interest rates (the difference between a gross interest rate and a cost-of-living allowance assumption): for actuarial equivalence under the optional nonintegrated and optional integrated provisions, the gross interest rate is six (6) percent per year, the cost-of-living allowance assumption is three (3) percent per year, and the net interest rate is three (3) percent per year; for actuarial equivalence under the mandatory integrated plan, the gross interest rate is six (6) percent per year, the cost-of-living allowance assumption is one and eight-tenths (1.8) percent per year and the net interest rate is four and two-tenths (4.2) percent per year.
 - (2) Mortality rate: UP 84 Mortality Table.
- (n) *Limitation on benefits.* Notwithstanding any provision governing the retirement system to the contrary, the benefits provided by the retirement system for members whose anticipated annual benefit provided by such contributions will exceed fifteen hundred dollars (\$1,500.00), and who are within the twenty-five (25) highest paid employees as of the time of the establishment of the retirement system (including any such highest paid employees who are not members at the time but who may later become members) must be subject to the conditions which are stated from time to time in applicable United States Treasury Regulations. The restrictions also apply to any increases in benefits following the establishment of the retirement system, as may be provided for in applicable United States Treasury Regulations.
 - (o) *Direct rollover distributions.* A member or beneficiary may elect, in any manner prescribed by the Chief Administrative Officer at any time, to have any portion of eligible rollover distribution (as defined in the Internal Revenue Code) paid directly to an eligible retirement plan (as defined in the Internal Revenue Code) specified by the member in a direct rollover. For purposes of this subsection, a direct rollover is a payment from the retirement system to the eligible retirement plan specified by the member.
 - (p) *Limitations Under Internal Revenue Code.* Distributions under a plan must be subject to the limitations of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit rules under Section 401(a)(9)(G) of the Internal Revenue Code, in accordance with any proposed or final regulations under Section 401(a)(9) of the Internal Revenue Code.

Sec. 33-45. Vested benefits and withdrawal of contributions.

- (a) *Eligibility for vesting.* A member must complete 5 years of membership before the member is qualified to vest, except that a member who has transferred service credit from a public retirement system in Maryland may use that service credit to qualify for vesting. A vested member must leave all member contributions, plus credited interest, in the fund to be eligible to receive retirement benefits.
- (b) *Withdrawal of contributions.* Member contributions, plus credited interest will be refunded if:
 - (1) A member's service with the county terminates before becoming eligible to vest.

- (2) A member eligible to vest terminates service and voluntarily elects to withdraw, thus ceasing to be a member.
- (3) A vested member dies before normal retirement date. The designated beneficiary will receive a lump sum death benefit equal to the member's contributions plus credited interest.

(c) *Vested benefits.*

- (1) Before July 1, 1989, a vested member is eligible to receive a percentage of the normal retirement pension that has accrued to date of termination, with payments beginning on the first day of the month following the member's normal retirement date. Percentage of vested rights will be based on years and months of credited service under the following schedule:

<i>Completed Years of Credited Service</i>	<i>Percentage of Vested Rights</i>
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, the designated beneficiary is entitled to receive whatever benefits may be provided under the pension payment option elected. However, an elected or appointed member who has completed 5 years in office, vests 100 percent if the member's service terminates before normal retirement date with a minimum monthly benefit of \$150.00.

- (2) On or after July 1, 1989, a member who has completed 5 years of credited service is fully vested in a normal retirement pension that has accrued to date of termination, with payments beginning on the first day of the month following the member's normal retirement date.
- (3) A former member who has completed 5 years of credited service but has not completed 10 years of credited service, who did not elect to receive a return of accumulated member contributions upon termination of employment, and who returns to county service on or after July 1, 1989, must complete one additional year of credited service before becoming fully vested.
- (4) A former member who has completed 10 years of credited service, who did receive a return of accumulated member contributions upon termination of employment and who returns to county service on or after July 1, 1989, must complete 5 additional years of credited service, before becoming fully vested.

However, if the member purchases prior county service under section 33-41(1), the member must complete the number of years of credited service which in addition to those years purchased under section 33-41(1) equals 5 years of credited service, but in no event may the member fully vest without completing at least one additional year of credited service.

- (5) If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, the designated beneficiary is entitled to receive whatever benefits are provided under the pension payment option elected. If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, but has not designated a beneficiary, no benefit will be paid unless required by another provision governing the retirement system.
 - (6) An elected or appointed member who has completed 5 years in office, and is not otherwise fully vested under paragraphs (c)(2) through (c)(5) of this section will vest 100 percent if the member's service terminates before normal retirement date with a minimum monthly benefit of \$150.00. However, an elected or appointed member who has any combination of years of credited service or years in office, will vest 100 percent if the member's service terminates before normal retirement date.
 - (7) Vested benefits for a member who is an elected official on July 1, 1989, will be determined under paragraph (c)(1) of this section before December 3, 1990. On and after December 3, 1990, the elected official's vested benefits will be determined under paragraphs (c)(2) through (c)(6) of this section.
- (d) *Discontinued service retirement.*
- (1) Any member whose employment has been terminated by an administrative action may elect a discontinued service pension if the member has at least 10 years of continuous service, with pension payments beginning on the member's early retirement date, or immediately if eligible for early retirement.
 - (2) A member who has been dismissed for cause or who has resigned is not eligible for a discontinued service pension.
 - (3) A member enrolled on or before June 30, 1978, and continuously enrolled thereafter, may substitute 10 or more years of credited service for the 10 or more years of continuous service requirement.
 - (4) The discontinued service retirement pension of a member who has been continuously enrolled in the retirement system since before July 1, 1978, is the amount of pension the member would have received under Section 33-42(b) for regular retirement, as modified as follows:
 - (A) substitute "final earnings" wherever the term "average final earnings" appears in the applicable formula under Section 33-42(b);
 - (B) add 5 percent of final earnings; and

- (C) treat a member who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, as if the member had remained in the optional plan.
- (5) The discontinued service retirement pension of any other member is the amount of pension the member would have received under Section 33-42(b)(2) for regular retirement.
- (e) *Discontinued service benefits of elected and appointed members.*
 - (1) If an elected or appointed member with 10 or more years of credited service, is not reappointed or reelected, the member may opt to:
 - (A) receive a pension immediately, if the member enrolled or reenrolled before January 22, 1974; or
 - (B) receive a pension at age 60, if the member enrolled or reenrolled on or after January 22, 1974.
 - (2) The pension for a member enrolled or reenrolled on or before September 26, 1983, or who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, is the pension the member would have received under Section 33-42(b) for regular retirement, except that:
 - (A) “final earnings” replaces “average final earnings” in the applicable formula in Section 33-42(b);
 - (B) a member who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, must be treated as if the member had remained in the optional plan; and
 - (C) the monthly benefit must be at least \$300.00.
 - (3) The pension for a member enrolled or reenrolled after September 26, 1983, or a member who submits an application to transfer from the optional plan to the integrated plan after September 26, 1983, is the amount of pension the member would have received under Section 33-42(b)(2) for regular retirement, except that:
 - (A) “final earnings” replaces “average final earnings” in the applicable formula in Section 33-42(b); and
 - (B) the monthly benefit must be at least \$300.
- (f) *[Exception.]* Section 33-45 does not apply to the elected officials' plan.
- (g) *Limitation on the use of forfeitures.* Except as provided in section 33-40(c), any forfeitures arising through the termination of members who have not attained full vesting must not be used to increase the benefits of any other member in the retirement system.

Sec. 33-46. Death benefits and designation of beneficiaries.

- (a) *Beneficiary death benefits of an active member whose death is not service connected.*
Upon the death of a member under circumstances not covered by subsection (b), the designated beneficiary must receive a death benefit payment equal to:
 - (1) member contributions, including picked-up contributions, with credited interest, or a spouse's, or domestic partner's, and children's benefit as provided in subsection (e); plus
 - (2) 50 percent of average final earnings if the member was a member of the employees' retirement system of the state of Maryland as of August 15, 1965, and became a member of the employees' retirement system of the County on or before December 31, 1966, or such later agency entrance date without a break in service, and who is not on leave without pay except for authorized leave without pay for illness.
- (b) *Spouse's, or domestic partner's, and children's benefits of a member whose death is service connected.*
 - (1) (A) If a member other than a Group F or G member dies while employed by the County or a participating agency on or after August 15, 1965, and the employing department or agency, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the employee's death resulted from injuries sustained in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed and the death was not due to willful negligence, the County must pay benefits as follows:
 - (i) a spouse's or domestic partner's benefit equal to 25 percent of the member's final earnings, paid as a monthly benefit for the spouse's or partner's life, but not less than \$250 per month; plus
 - (ii) a child's benefit equal to 5 percent of the member's final earnings, paid as a monthly benefit, but not less than \$50 per month until the child reaches age 21 or for life if the child is disabled and incapable of self-support.
 - (B) The Chief Administrative Officer must ensure that the maximum total benefit for a spouse or domestic partner and child must not exceed 40 percent of the member's final earnings.
 - (C) The Chief Administrative Officer must not pay the benefit to the spouse or domestic partner and child if the spouse or domestic partner elects to receive benefits under subsection (e). However, the Chief Administrator must pay a child's benefit if the eligible spouse or domestic partner dies before the child is 21 years old.
- (2) The Chief Administrative Officer must pay death benefits to the spouse or domestic partner and child of a Group F or G member as if the member had been

receiving a service-connected disability pension on the date of the member's death and had selected a joint and survivor pension option of 100 percent of the amount payable to the member, if:

- (A) the Group F or G member died while employed by the County; and
 - (B) the employing department, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the member's death:
 - (i) resulted from injuries the employee received in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed; and
 - (ii) was not due to the employee's willful negligence.
- (3) The Chief Administrative Officer must pay a benefit to the spouse or domestic partner and children of a Group G member who dies on or after July 1, 2004 under the conditions stated in subsection (2) as if the member had died while receiving a service connected disability retirement benefit of at least 70 percent of the member's final earnings.
- (c) *Spouse's, or domestic partner's, and children's benefits when a member who has retired on a disability dies.* When a member who has retired on a disability dies, the spouse or domestic partner is entitled to receive the death benefits provided under the pension payment option elected. If the spouse or domestic partner died before the member, any child of the retiree less than 21 years old is entitled to receive these death benefits, shared equally among the member's children who are less than 21 years old.
- (d) *Actuarial value of spouse's, or domestic partner's, and children's benefits.* If the actuarial value of a spouse's, or domestic partner's, and children's benefit is less than the death benefit payment otherwise payable under subsection (a), the County must pay the death benefit or the benefit's actuarial equivalent instead of the spouse's, or domestic partner's, and children's benefit.
- (e) *Spouse's, or domestic partner's, and children's benefits when an active member eligible for vesting or retirement dies.*
- (1) A surviving spouse, domestic partner, or child who is the designated beneficiary of a member who died after becoming eligible to vest or retire, may elect within 60 days after the member's death a benefit equal to the yearly amount of benefits that would have been payable if the member had vested or retired immediately before death and had elected a 100-percent joint and survivor pension option. The payments must begin on the member's normal retirement date if the member was eligible for vesting, or immediately if the member was eligible for retirement.
 - (2) If the designated beneficiary who would receive a death benefit under paragraph (1) dies before the death benefit payments begin and the member designated a contingent beneficiary, the death benefit under subsection (a) must be paid to the

contingent beneficiary designated by the member (or to a person designated by the beneficiary if the member left no enforceable contingent beneficiary designation.)

- (3) If the member meets the requirements for the benefit in subsection (a)(2), the beneficiary also is entitled to receive a death benefit equal to 50 percent of the member's average final earnings.

(f) *Designation of beneficiaries.*

- (1) A member may name a primary beneficiary or beneficiaries and contingent beneficiary or beneficiaries on a designation of beneficiaries form to be filed with the Office of Human Resources. If a member names 2 or more persons as beneficiaries, the persons must be considered co-beneficiaries unless the member specifies otherwise. A member may change any named beneficiary by written request. The consent of the beneficiary or beneficiaries is not required to name or change a beneficiary. The designation is effective when the member signs the request even if the member is not living when the Office receives the request, but without prejudice for any payments made before the Office received the request.
- (2) If a member dies without designating a surviving beneficiary or the designation is not enforceable, the surviving spouse or domestic partner (or if there is no surviving spouse or domestic partner, each surviving child, sharing equally with any other surviving child) is the designated beneficiary for purposes of this Section and any other death benefit provided to a "designated beneficiary" under the Employees' Retirement System. If no spouse, domestic partner, or child survives a member who left no enforceable beneficiary designation, the member's estate is the designated beneficiary.

(g) *Elected officials plan.* If an elected officials' participant dies before the County has implemented the method of distribution of benefits to the elected officials participant under a method of distribution designated in Section 33-44, the elected officials' participant's vested County elected officials' contributions account balance, including picked-up contributions, and the amounts distributable under Section 33-39(c)(2) from the elected officials' plan, must be distributed to the elected officials' participant's designated beneficiary. A beneficiary may choose to have benefits distributed in any method listed in Section 33-44(f)(2). If the beneficiary does not choose a method of distribution, the method of distribution must be a variable annuity that reflects investment gains and is payable for the beneficiary's life. The County Executive may provide by regulation adopted under method (3) a procedure for a beneficiary to choose a method of distribution.

(h) For purposes of this Section, a beneficiary designation is "not enforceable" if:

- (1) the designated beneficiary:
 - (A) predeceases the member;
 - (B) disclaims the benefit; or

- (C) is not an identifiable person; or
- (2) the designation is legally void for any reason.

DIVISION 4. ADMINISTRATION.

Sec. 33-47. Administration.

- (a) *Responsibility for administration.* The chief administrative officer shall be responsible for the administration of the retirement system.
- (b) *Regulations for administration.* The county executive must establish regulations, adopted under method (1) of section 2A-15 of this Code, for the administration of the retirement system, within the limitations of this article. However, the county executive must establish regulations, adopted under method (3) of section 2A-15, for the administration of the elected officials' plan.
- (c) *Chief administrative officer.* Except for the powers of the board, the chief administrative officer has the power and the duty to take all actions and to make all decisions to administer the retirement system.
- (d) *Powers and duties of the Chief Administrative Officer.* The chief Administrative Officer has, but is not limited to, the following powers and duties:
 - (1) Interpret the provisions of the retirement system;
 - (2) Decide the eligibility of any employee and the rights of any member or beneficiary to receive benefits;
 - (3) Compute the amount of benefits payable to any member or beneficiary;
 - (4) Authorize disbursements of benefits;
 - (5) Keep records;
 - (6) Select and retain the actuary for the retirement system;
 - (7) After consultation with the board and the actuary for the retirement system, determine the actuarial cost method, and the mortality, turnover, interest rates, and other assumptions to be used in actuarial and other computations for the retirement system;
 - (8) Consider the recommendation of the actuary for the retirement system on contributions the county makes under this article;
 - (9) Incur expenses as necessary for the chief administrative officer to administer the retirement system;
 - (10) Disclose the reports prepared under section 33-51;

- (11) Prepare and file reports that are required by law; and
- (12) In connection with the participation or withdrawal of an agency as a participating agency in the retirement system:
 - (A) obtain any data and require any documentation that the Chief Administrative Officer finds necessary;
 - (B) retain an independent actuary not otherwise under contract to the system to compute the valuation of the accrued benefit of any member or group of members upon withdrawal from the retirement system by a formula set out in regulations adopted under subsection (b); and
 - (C) authorize the transfer of accrued benefits to another retirement system qualified under the Internal Revenue Code;
- (13) Authorize the refund of member contributions, and earnings thereon, to correct any contribution or withholding error; and
- (14) Delegate any power or duty under this Section.
- (e) *Payment of expenses and contributions.*
 - (1) The County must pay contributions of the County to the retirement system from appropriations approved by the County Council.
 - (2) The board must pay:
 - (A) operating expenses of the integrated retirement plan and the optional retirement plan from the assets of these plans; and
 - (B) operating expenses of the elected officials' plan from plan assets or from County government assets, at the direction of the Chief Administrative Officer.
- (f) *Exemption.* Chapter 11B does not apply to procurement of goods and services for the retirement system by the chief administrative officer.

Sec. 33-48. Disability retirement hearing board.

- (a) *Establishment.* There is a disability retirement hearing board until the board makes a final decision on all disability retirement applications submitted to the board before the date on which the disability benefits program under article VI of chapter 33 takes effect.
- (b) *Composition, duties, and responsibilities.* The disability retirement hearing board has the composition, duties, and responsibilities as were provided by law to the board before August 11, 1985.

Sec. 33-49. Medical review committees.

- (a) *Establishment.* For each disability retirement application received by the disability retirement hearing board, the board must designate a medical review committee. Any committee established by the board exists until that committee makes a final report to the board on all medical examinations referred to that committee based on applications submitted to the board before the date on which the disability benefits program under article VI of chapter 33 takes effect.
- (b) *Composition, duties, and responsibilities.* A medical review committee has the composition, duties, and responsibilities as were provided by law to those committees before August 11, 1985.

Sec. 33-50. Reserved.

Sec. 33-51. Reports and audits.

- (a) *Annual and quarterly reports.*
 - (1) By February 15 of each year, the chief administrative officer must submit to the county council and county executive an annual report on the status of the retirement system for the preceding fiscal year. The chief administrative officer must make the report available to all interested county officials, each member of the retirement system, and the public.
 - (2) The chief administrative officer must submit to the council a proposed format of the first annual report that includes the investment performance report of the board. The council must approve or disapprove the format and may request the chief administrator officer to provide additional information in the report. If the council does not act on the format within forty-five (45) days after the chief administrative officer submits the format, the format is automatically approved. The council may extend the time to consider the format for an additional forty-five (45) days.
 - (3) The council may request the chief administrative officer or the board to provide additional information in the annual report or in additional reports. The chief administrative officer and the board must provide the additional information.
 - (4) The chief administrative officer must submit to the council quarterly reports on the status of the retirement system. In a quarterly report the chief administrative officer may summarize information provided in an annual report.
- (b) *Annual report of member contributions and credited interest.* Except for the elected officials' participant contributions to the elected officials' plan, the Board must give each member by December 1 of each year a report on the member's contributions with credited interest as of June 30 of the preceding fiscal year. The Board must give each elected officials' participant a report on the elected officials' participant contributions on a quarterly basis.
- (c) *Independent audit of the retirement system.* A complete independent audit of the retirement system shall be made at least annually by the firm of certified public accountants under contract by the county council for the purpose of implementing the

provisions of article III, section 315, of the charter of the county. The complete audit shall be filed with the county council and copies thereof shall be made available to the public and open to public inspection.

Sec. 33-52. Payment of benefits.

- (a) *Pension payment.* A member's pension will be paid in advance each month during retirement, beginning on the retirement date elected. In the event of the member's death before the end of the month, advanced retirement pension for such month is not returnable. The full monthly amount of each payment will equal one-twelfth of the yearly amount of pension for the member. Payments for less than one (1) full month must be prorated on a daily basis. When pension payments begin, the chief administrative officer must send the member a notice showing the amount and terms of payment. If the payee for any payment is a minor or an incompetent person, the chief administrative officer may authorize payments be made to the person legally responsible for the payee.
- (b) *Discontinuance of pension payments.* A member must not receive pension payments while serving in an appointed or elected County office that receives any compensation paid by the County. A member appointed to a full-time County position must become a member of the retirement system or the Retirement Savings Plan under Sections 33-37 and 33-115 and make member contributions until later separation under Article III or Article VIII. The retirement benefit of an employee who resumes membership in the optional or integrated plan must be recalculated when the employee later separates from service. The retirement benefit under Article III of an employee who becomes a member of the Retirement Savings Plan must resume when the employee later separates from service.
- (c) *Exemption from claims.* All pension payments under the system are non-assignable and are exempt from the claims of creditors to the maximum extent permitted by law.
- (d) *Advanced quarterly payments.* Quarterly payments may be made in advance, or with the consent of the payee, a single sum payment in an actuarially equivalent amount may be made, if the amount of any monthly payment payable to any payee would be less than twenty-five dollars (\$25.00).
- (e) *Seven-year limitation.* There will be no obligation to make any payment to a payee hereunder unless the payor has received proof that the payee was living on the due date of the payment. If such proof is not received within seven (7) years after the due date of the payment, and if no proof of death of the payee is received during such seven-year period, the obligations of the payor as to the payment will be the same as if the payee had died immediately before the due date of the payment.

Sec. 33-53. Protection against fraud.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be charged with a misdemeanor, and may be punishable under the laws of the county and the state. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than entitled to receive had the records been correct, the error shall be corrected and as far as practicable the payment shall be adjusted in such manner that the actuarial

equivalent of the benefit to which such member or beneficiary was correctly entitled will be paid. Any member or beneficiary who has received payment from the retirement system of any monies to which not entitled under the provisions of this act, shall be required to refund such monies to the system.

Sec. 33-54. Exemption from execution, garnishment, or attachment.

The right of a person to pension, the return of member contributions with credited interest, any pension payment option, death benefit, or any other right accrued or accruing to any person under this Article, and the money used to fund the retirement system created by this Article are not subject to execution, garnishment, attachment or any other process, and are not assignable, except as provided in this Article, or when an employee is indebted to the County or the Montgomery County Employees' Federal Credit Union.

Despite any other provision in this Section, a benefit is payable to an alternate payee under a domestic relations order, as defined in Section 414(p)(1)(B) of the Internal Revenue Code, if the order is considered a qualified domestic relations order under Section 414(p)(11) of the Internal Revenue Code. The Chief Administrative Officer must authorize forms and procedures to determine whether a domestic relations order is qualified, and must determine the form and timing of distributions under a qualified order.

Sec. 33-55. Filing of retirement system plan and contract.

- (a) *Filing of plan.* The plan of the employees' retirement system of the county shall be filed with the Insurance Department of the State of Maryland and the Internal Revenue Service, United States Treasury Department.
- (b) *Filing of contract.* The contract entered into between the county and the funding agent shall be filed with the Insurance Department of the State of Maryland and the Internal Revenue Service, United States Treasury Department.

Sec. 33-55A. Qualification contingency for elected officials' plan.

- (a) In the event it is determined that the elected officials' plan is not a qualified plan within the meaning of section 401(a) of the Internal Revenue Code, then the provisions of this chapter regarding the elected officials' plan are repealed as of the date of the determination. The repeal dates back to the original effective date of this act.
- (b) Any account balance with respect to county elected officials' contributions must be returned to the county as soon as administratively possible after the repeal.
- (c) Any account balance with respect to required elected officials' participant contributions or account balance with respect to voluntary elected officials' participant contributions, including any amount picked up by the county pursuant to section 33-39(a)(3), must, as soon as administratively possible following a repeal under this section 33-55A, be returned to the elected officials' participant who made them.
- (d) (1) Following a repeal under this section 33-55A, an elected officials' participant who does not make the election provided for in subsection 33-55A(e) may choose to become a participant in a retirement plan of the retirement system in which that individual would have been eligible to participate if the elected

officials' plan had never existed.

- (2) Benefits and vesting under a plan in which the individual becomes a participant under paragraph (d)(1) must be determined based only on credited service earned or purchased after the individual becomes a participant in the plans, plus any credited service earned or purchased prior to the individual's becoming an elected officials' participant, except as otherwise provided in paragraph (d)(3).
- (3) Credited service earned while an elected officials' participant must be counted in determining benefits and vesting under a plan in which the individual becomes a participant under paragraph (d)(1) if the individual so chooses. An individual making that choice must contribute to the plan, in a single lump-sum cash payment, the total nonvoluntary employee contributions that the employee would have been required to make under the plan for the period during which that individual was an elected officials' participant if the individual had participated in the plan instead of the elected officials' plan. The county must also make, on behalf of any individual making the choice and contribution, contributions to the plan in the amount the county would have made on behalf of that individual for the period during which that individual was an elected officials' participant if the individual had participated in the plan instead of the elected officials' plan.
- (e) Following a repeal under this section 33-55A, an individual who was an elected officials' participant may choose to have the county establish on that individual's behalf a nonqualified deferred compensation arrangement within the meaning of section 457 of the Internal Revenue Code. The arrangement must provide for deferral of compensation, beginning as of the first day of the month following the month in which the arrangement is entered into, until the individual's normal retirement date, in amounts that are sufficient to provide for a benefit comparable to the benefit the individual would have received under the elected officials' plan from the county elected officials' contributions account of the individual, assuming for purposes of the arrangement that the elected officials' plan would have continued to the individual's date of distribution and that all county elected officials' contributions would have been made to the elected officials' plan on the individual's behalf up to that date and that the account balance in the county elected officials' contributions account as of the date of repeal under this section 33-55A, and all subsequent contributions, would have earned interest, from and after the date of repeal under this section 33-55A, at the rate of six (6) percent per year. The regular earnings of such elected official must be increased as of the first day of the month following the month in which such arrangement is entered into by an amount equal to the amount to be deferred each month under such arrangement. (1987 L.M.C., ch. 27, § 11.)

Sec. 33-56. Interpretations.

- (a) The Chief Administrative Officer is responsible for deciding questions arising under this Article. Any member of the County's retirement system and any retiree or designated beneficiary eligible to receive benefits from the retirement system, may request, in writing, a decision on questions arising under this Article from the Chief Administrative Officer, who must respond in writing to such request within 60 days. The response must include a statement of appeal rights.
- (b) The Chief Administrative Officer's decision on a disability application under Section 33-43 may be appealed under subsection 33-43(1).

- (c) Any other decision by the Chief Administrative Officer may be appealed within 15 days to the Merit System Protection Board under procedures established by the Board. The decision of the Board is final.

Sec. 33-57. Records.

- (a) *Records generally.* The chief administrative officer must prescribe the form, the scope, and the maintenance of records. The records of the retirement system must be maintained on the basis of the plan year.
- (b) *Decision of chief administrative officer on records.* The decision of the chief administrative officer relating to the confidentiality, use, maintenance and disposition of all records and materials relating to the employees' retirement system of the county, and as to whether any information contained therein may be disclosed, shall be final.
- (c) *Time limit records are to be kept.* The chief administrative officer, when not in conflict with state or county law, shall determine the time limit that retirement system records shall be kept on file and the final disposition of such records.

Sec. 33-58. Trust established—Trust fund.

- (a) The county establishes a trust, which is part of the retirement system, for the benefit of the members of the retirement system. The trust consists of the money and property of the retirement system on the day before the day all the trustees have accepted the trust in writing, and any earnings, profits, increments, appreciation, and other additions that accrue.
- (b) All of the money and property, all investments made with that money and property, and all earnings, profits, increments, and other additions, less the payments previously made by the board, are to be referred to as the trust fund.
- (c) The board has legal title to all cash and other property of the retirement system, but may delegate some or all incidents of ownership as provided in this article.

Sec. 33-59. Board of investment trustees.

- (a) *Established.*
 - (1) The Board of Investment Trustees is established to manage the trust under this Article.
 - (2) The Board continues until abolished by law.
- (b) *Membership.*
 - (1) The Board has 13 trustees.
 - (2) The County Executive must appoint 4 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely

while each holds the respective office. These *ex officio* trustees should be:

- (A) the Director of Management and Budget;
- (B) the Director of Finance;
- (C) the Director of Human Resources; and
- (D) the Staff Director of the County Council.

(3) The following 9 trustees must be appointed by the Executive and confirmed by the Council:

- (A) Three active County employees, each of whom is a member of a different collective bargaining unit, and who are vested members of the retirement system, or individuals recommended by each employee organization certified under Articles V, VII, or X. Each employee organization may recommend 3 to 5 individuals for the respective trustee position. Before appointing these trustees, the Executive must consider, and should select from, the individuals recommended by the employee organizations. The Executive must not appoint more than one person from each employee organization. The Executive must notify the Council when appointing an individual not recommended by an employee organization. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council. Any trustee appointed under this subparagraph must not vote on any matter involving the County deferred compensation plan.
- (B) An active County employee who is a vested member of the retirement system and the Merit System, and not a member of a collective bargaining unit. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.
- (C) A retired County employee who is a member of the retirement system. Before appointing this trustee, the Executive must consider, and should select from, a list of 3 to 5 individuals recommended by the Montgomery County Retired Employees' Association. The Executive must notify the Council when nominating an individual not recommended by the Association. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.
- (D) Two persons recommended by the Council who are knowledgeable in pensions, investments, or financial matters. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.
- (E) Two individuals knowledgeable in pensions, investments, or financial matters. Before nominating these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens' groups. An individual recommended by a citizens'

group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens' group. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.

- (4) A trustee appointed under paragraph (3) continues to serve after the trustee's term ends until the Council confirms a successor, but the term for each position is not affected by any holdover. A trustee who, after appointment and before the end of a term, is no longer qualified for the trustee's position is removed from the Board by operation of law.
 - (5) The Executive must not appoint as a trustee any person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.
- (c) *Vacancies.*
 - (1) A trustee who is absent from more than 25 percent of the scheduled meetings of the Board during any 12-month period has resigned from the Board. Scheduled meetings mean meetings held at least 7 days after notice of the meeting.
 - (2) A vacancy on the Board must be filled for the unexpired term in the same manner as the previous trustee was appointed.
- (d) *Compensation.* The trustees must serve without compensation from any source for service rendered to the Board, except that an active employee trustee may receive administrative leave to serve on the Board. The Board must reimburse trustees for any expense approved by the Board. A trustee must not receive reimbursement for expenses from any other source.
- (e) *Acceptance of trust.* Within 10 days after the Council confirms a trustee, the trustee must certify in writing to the Chief Administrative Officer that the trustee accepts the trust and will administer the affairs of the trust with care, skill, prudence, and diligence.
- (f) *Written policies.*
 - (1) The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the trust and the retirement system.
 - (2) The Board must apply the policies to all members and beneficiaries of the retirement system and must not discriminate in favor of or against any member or beneficiary of the retirement system.
- (g) *Officers.* The Board must select a chair, vice chair, and secretary from the Board's members.
 - (1) The chair must preside at meetings of the Board and may take administrative action, including executing an instrument, on behalf of the Board. A person may rely in good faith on an act of the chair as legally valid.

- (2) The vice chair must perform the duties and exercise the powers of the chair when the chair is absent from the County or disabled, or the Board determines is otherwise unable to perform the duties of the chair.
 - (3) The secretary must record the proceedings and actions of the Board and may certify a document or action of the Board. A person may rely in good faith on the secretary's certification as proof of the document or action.
- (h) *Meetings and actions.*
- (1) The Board must meet at least once during each calendar quarter. The chair, or 7 members of the Board, may call a meeting of the Board, in the manner and at times and places provided under the policies of the Board. The Board is a public body under the State Open Meetings Act.
 - (2)
 - A. Seven trustees constitute a quorum.
 - B. Each trustee has one vote.
 - C. Seven trustees must agree for the Board to act.
 - (3) The Board may act without a meeting. All of the trustees must concur in writing for the Board to approve any action the Board takes without a meeting.
 - (4) The Board may adopt procedures consistent with this Section.
 - (5) The Board may authorize a trustee to execute instruments on behalf of the Board. The authority must be in writing and specifically describe the instrument and how the trustee must execute the instrument.
- (i) *Records.*
- (1) The Board must keep investment accounts and records necessary to calculate the value of each retirement system fund and evaluate the experience and performance of the retirement system.
 - (2) The Board may designate a person to maintain the records.
 - (3) Accounts and records are subject to State law on public records.
- (j) *Removal of trustee.* With the Council's approval, the County Executive may remove a trustee for violating this Article or other good cause.
- (k) *Legal adviser.* The County Attorney is the legal adviser to the Board.
- (l) In this Section, "retirement system" means the Employees' Retirement System or the Retirement Savings Plan.

Sec. 33-60. The board of investment trustees—Powers and duties.

- (a) *General.*

- (1) Except as provided in section 33-47, subsection (a)(2) of this section, and other sections of this chapter, the powers and duties with respect to the administration and the investments of the retirement system are hereby vested in the board of investment trustees. However, the powers and duties of the board must not become effective until all of the trustees have accepted the trust in writing.
- (2)
 - a. The board must invest and reinvest, or cause to be invested or reinvested, the principal and income of the retirement system and keep the same invested without distinction between principal and income. The board has the exclusive authority to manage the assets of the retirement system. The board may make or permit an investment manager to make individual investment selections with respect to investments described in subsections (c)(1)d., e., f., and g. of this section and with respect to personal property described in subsection (c)(1)h. The board must select investment managers to make individual investment selections with respect to investments described in subsection (c)(1)a., b., and c. of this section and with respect to real property described in subsection (c)(1)h. However, any investment of the retirement system in existence on the day before all members have accepted the trust may remain as an investment until the earlier of:
 - (i) Its maturity date, if any;
 - (ii) The date it is liquidated under the investment policy of the board; or
 - (iii) The date it is liquidated under subsection (c)(6).The board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group Annuity Contract #1920 until Aetna Life Insurance Company has completed its performance under that agreement.
 - b. The board must appoint at least two (2) investment managers as soon as possible after all of the members of the board have accepted the trust. Within one (1) year of the date all of the trustees have accepted the trust in writing, the board must have appointed at least three (3) investment managers. The investment manager which has contracts for the investment of the retirement system's assets as of the date the council adopts this article may be one of these investment managers.
 - c. At any time the board is selecting a new investment manager, the board may have fewer than three (3) investment managers.
- (3) Chapter 11B does not apply to procurement of goods and services for the retirement system by the board.

(b) *Agents for transfer of property.*

- (1) The board may register any securities or other property in its own name or in the name of a nominee. The board may hold any security in bearer form. However, the board or its agent must keep records that show that the investments are part of the trust fund.
- (2) The board may form a partnership under the laws of Maryland for the purpose of holding or transferring securities as the nominee of the board.
- (3) The board may designate in writing a trustee to hold or transfer securities as nominee of the board.
- (4) The board must provide that trustees or a partnership that the board designates must act only as agents of the board. The board may set other conditions that the board considers prudent.
- (5) The trustees of a partnership the board designates may agree with a bank or other financial institution to:
 - a. Guarantee the signatures made as nominee of the board; and
 - b. Conduct settlements and transfers through participation in central security depositories.
- (6) Except as authorized by executive regulation adopted under method (3) that is substantially equivalent to federal ERISA regulations on maintenance of indicia of ownership of plan assets, the board must maintain the indicia of ownership of the assets of the retirement system within the jurisdiction of the district courts of the United States.

(c) *Authorized investments.*

- (1) Subject to subsection (a)(2) of this section, the board may invest or permit an investment manager to invest the assets of the retirement system fund in any investment it considers prudent within the policies set by the board, including but not limited to:
 - a. Bonds, debentures, notes, savings accounts, certificates of deposit, variable note arrangements, obligations of the United States Government, commercial paper, money market certificates, bankers' acceptances or other evidence of indebtedness;
 - b. Mortgages, certificates of mortgage pools and guaranteed mortgage pass-through certificates or other similar investments in mortgages;
 - c. Stocks (regardless of class), or other evidence of ownership, in any corporation, mutual fund, investment company, association, or business trust;
 - d. Combined, common or commingled trust funds;

- e. Retirement or annuity contracts;
 - f. Guaranteed investment contracts;
 - g. Group annuity contracts; and
 - h. Real and personal property of all kinds, including leaseholds on improved or unimproved real estate, oil, mineral or gas properties, or royalty interests or rights. However, any investment in real property is limited to a pooled investment arrangement in which the board has no power or right to manage the real estate property, provided that the pooled arrangement does not invest more than 10% of its assets in real property located in Montgomery County.
- (2) If an investment through any combined, common or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement system trust under this article.
- (3) The board and an investment manager must not invest the retirement system assets in any bonds, notes or debt instruments issued by:
- a. The county;
 - b. Any political subdivision within the county;
 - c. Any agency supported or financed wholly or partly by taxes levied by the county council; or
 - d. Any agency supported by bond issues underwritten by the county.
- (d) *Trustee powers.* Subject to the limitations under subsection (a)(2) of this section, the board has the power to:
- (1) With any cash, purchase or subscribe for any investment, at a premium or discount, and retain the investment.
 - (2) Sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose, at public or private sale, for cash or credit or both, any part of the retirement system.
 - (3) Except as provided in section 33-61A(h)(2), sue, defend, compromise, arbitrate, compound and settle any debt, obligation, claim, suit, or legal proceeding involving the retirement system, and reduce the rate of interest on, extent or otherwise modify, foreclose upon default or otherwise enforce any debt, obligation, or claim.
 - (4) Retain uninvested that part of the retirement system fund described in subsection (f) without being liable for the payment of interest.
 - (5) Exercise any option on any investment for conversion into another investment, exercise any rights to subscribe for additional investments, and make all

necessary payments.

- (6) Join in, consent to, dissent from, oppose, or deposit in connection with the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporation or property in which the assets of the retirement system are invested, or the sale, mortgage, pledge or lease of that property or the property of any such corporation upon such terms and conditions that the board considers prudent; exercise any options, make any agreements or subscriptions, pay any expenses, assessments, or subscriptions, and take any other action in connection with these transactions that the board considers prudent; and accept and hold any investment that may be issued in or as a result of any such proceeding.
- (7) Vote, in person or by any proxy, at any election of any corporation in whose stock the assets of the retirement system are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the retirement system; and give general or specific proxies or powers of attorney with or without power of substitution.
- (8) Sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the trust, partition or exchange any real property for such prices and upon such terms as the board considers prudent, and execute and deliver deeds of conveyance and all assignments, transfers, and other legal instruments for passing the ownership to the purchaser, free and discharged of all liens.
- (9) Renew or extend any mortgage, upon such terms that the board considers prudent, and increase or reduce the rate of interest on any mortgage or modify the terms of any mortgage or of any guarantee as the board considers prudent to protect the retirement system or preserve the value of the investment; waive any default or enforce any default in a manner that the board considers prudent; exercise and enforce any right of foreclosure, bid on property in foreclosure, take a deed in lieu of foreclosure with or without paying a consideration, and release the obligation on the bond secured by the mortgage; and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.
- (10) Form a corporation or corporations under the laws of any jurisdiction or acquire an interest in or otherwise make use of any corporation already formed to invest in and hold title to any property.
- (11) For the purpose of investing in and holding title to real or personal property or part interests therein, as described in subsection (c)(1)h., including equipment pertaining thereto, leaseholds, and mortgages, to take any action it considers prudent.
- (12) Incur and pay expenses for agents, financial advisors, actuaries, accountants and counsel, if those expenses are incurred solely to perform the board's duties under this article.

- (13) Borrow, raise or lend moneys, for the purposes of the retirement system, in such amounts and upon such terms and conditions as the board in its discretion considers prudent; for any money borrowed, issue a promissory note and secure the repayment of this note by pledging or mortgaging all or any part of the retirement system.
 - (14) Hold, buy, transfer, surrender, and exercise all other incidents of ownership of any annuity contract.
 - (15) If payments to a member or beneficiary are to be made in the form of an annuity based upon one (1) or more lives or life expectancies, buy from any legal reserve life insurance company a single premium, nontransferable annuity contract providing for the payment of the benefits.
 - (16) Do all acts which it considers necessary and exercise any and all powers of this article with respect to the management of the retirement system, and in general, exercise all powers in the management of the assets which an individual could exercise in the management of property owned in the individual's own right except for making an individual investment selection.
- (e) *Prohibited transactions.* The board must not engage in any transaction between the trust and the county or any entity controlled by the county in which the board:
- (1) Lends any part of its income or corpus, without receiving adequate security and a reasonable rate of interest;
 - (2) Pays any compensation, more than a reasonable allowance for salaries or other compensation or personal services actually rendered;
 - (3) Makes any part of its services available on a preferential basis;
 - (4) Makes any substantial purchase of securities or other property, for more than adequate consideration;
 - (5) Sells any substantial part of its securities or other property, for less than adequate consideration; or
 - (6) Engages in any transaction which results in a substantial diversion of its income or corpus.
- (f) *Available cash.* The board may keep cash available in an amount it considers prudent to pay benefits, expenses and other payments. The board may keep cash on deposit in one (1) or more banks or trust companies organized under the laws of any state, or of the United States, but the sum on deposit in any one (1) bank or trust company must not exceed twenty-five (25) percent of the paid-in capital and surplus of that bank or trust company.
- (g) *Investment management agreements.*
- (1) *Appointment of investment manager.* Except as permitted under subsection (a)(2), the board must appoint investment managers to manage, acquire, or dispose of all

or some of the assets of the retirement system. The board may dismiss any manager the board appoints. The fees charged by any manager are expenses of the retirement system.

- (2) *Investment contract.* Any contract must provide that when the investment manager is making individual investment selections, the investment manager must make the individual investment selections subject to the written policies of the board. In any contract, the board must identify the assets that are the subject to the contract. In any contract, the board may give an investment manager the right to invest the assets of the retirement system specified in the contract without prior notice to or approval by the board. In any contract, the board may limit the investment of a specified portion of the retirement system to a certain type of property, such as but not limited to common stocks, bonds, or real estate. If a contract only applies to a portion of the assets of the retirement system and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement system. In any contract, the board may delegate to the investment manager any of the powers or discretion conferred on the board under this article and may provide that the investment manager must have custody and control of certain assets of the retirement system.
 - (3) *Monitoring of investment manager.* The board must monitor the performance of the managers and may terminate any appointment. Monitoring may include any tests or analyses that the board considers prudent in the circumstances to ensure the stability and growth of the retirement system.
- (h)
- (1) Except as provided in subsection (d)(12), the board must pay all benefits and expenses of the retirement system as directed by the chief administrative officer.
 - (2) If the board approves a contract for delegation of the custodial functions as provided in section 33-61, the board must coordinate the payment of benefits and must monitor the timeliness and accuracy of such benefit payments.
 - (3) The board is entitled to rely on the decision of the chief administrative officer as to the proper recipient of benefit payments.

Sec. 33-61. Custodian.

- (a) The director of finance is the custodian of the retirement system assets. The director must give bond with such surety and for such periods and in such amount as the board determines. All payments from the retirement system assets must be made by (i) the director of finance, (ii) a designee of the director of finance, or (iii) two (2) persons designated by the board, acting jointly. The board must file a duly attested copy of the resolution of the board designating the two (2) persons, with specimen signatures of those persons, with the director of finance to indicate their authority for making payments.
- (b) If the board approves, the director of finance may make written contracts with banks, trust companies, insurance companies or investment companies authorized to do business in any state for the safe custody of investments, banking services, the payment of benefits

and expenses and any other function necessary for the management and safeguarding of the assets of the retirement system. The contract may provide that a bank, trust company, insurance company, or investment company may invest assets of the retirement system in:

- (1) Money market funds;
 - (2) A short-term investment fund of a bank, trust company, or insurance company; or
 - (3) Their substantial equivalent. As soon as possible after all members of the board have accepted the trust, the board must approve a written contract for the investment purposes described in this subsection.
- (c) If the board approves, the director of finance may direct the payment of benefits and expenses from a trust account of the board.
- (d) Chapter 11B does not apply to the procurement of goods and services for the retirement system by the director of finance.

Sec. 33-61A. Indemnification of trustees.

- (a) *Authorized.* The county must indemnify every member of the board who is or may become a party to any action, suit, or proceeding, including administrative and investigative proceedings, by reasons of service as a member of the board, subject to the conditions stated in this section.
- (b) *Standards for indemnification.*
- (1) The county must indemnify a member of the board:
 - a. With respect to civil matters, if the member acted in good faith and in a manner that the member reasonably believed to be in the best interest of the retirement system; and
 - b. With respect to criminal matters, if the member had no reasonable cause to believe that the member's conduct was unlawful.
 - (2) If the county must indemnify a member of the board under this article, the county must indemnify the member for expenses when the member incurs the expense, including but not limited to:
 - a. Reasonably attorney fees;
 - b. Judgments;
 - c. Damages;
 - d. Fines; and
 - e. Settlements.

- (c) *Effect of termination of any suit or proceeding.* The termination of any suit or proceeding does not, by itself, create a presumption that a trustee did not act in good faith and in a manner reasonably believed to be in the best interest of the retirement system. The termination of a criminal action or proceeding does not, by itself, create a presumption that a trustee had reasonable cause to believe that the conduct was unlawful.
- (d) *Exceptions to indemnification.* The county must not indemnify any member of the board if:
 - (1) The member of the board is found by a court or other tribunal to be liable for gross negligence or willful and wanton misconduct in the performance of a duty to the retirement system; or
 - (2) Liability arises from action that occurred before the date on which all the trustees have accepted the trust in writing.
- (e) *Recovery of payments.* If the county attorney determines that indemnification payments have been made that are outside the scope of indemnification, the county attorney must take appropriate action, on behalf of the county, to recover the payments.
- (f) *Insurance provided.* The county must provide insurance for each member of the board against any liability asserted against or incurred by the member of the board with respect to service on the board. Premiums for any insurance must not be paid with assets of the retirement system. The county may self-insure for this purpose, wholly or partly. If the county does not provide adequate insurance coverage or indemnification under this section, a member of the board need not pay any amount attributable to liability incurred by serving on the board, and the county must pay any amount due.
- (g) *Defenses.* The county may assert the defense of governmental immunity, or any other defense available to the county, in suits or other actions brought against the county.
- (h) *County attorney.*
 - (1) The county attorney must make the final determination of eligibility of a member of the board for indemnification with respect to a matter, and of the reasonableness of all fees, expenses, and settlements.
 - (2) Unless the county attorney approves the settlement, a trustee must not use:
 - a. County funds;
 - b. Funds provided by a self-insurance program of the county; or
 - c. Funds provided under a policy the county has with an insurance company; to settle a claim against the trustee.

Sec. 33-61B. Accounts and records of the board of investment trustees.

- (a) *Maintenance of records and accounts.* The board must keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions, including any

specific records that are required by law and any additional records it considers necessary. All accounts, books and records are subject to state law on public records.

- (b) *Annual accounting by board.* The fiscal year of the retirement system is the same as the fiscal year of the county. On or before January 1 of each year, the board must file with the chief administrative officer a written account, listing all investments, receipts, disbursements, and other transactions during the preceding fiscal year or during the period from the close of the last preceding fiscal year to any interim date that the board selects. This account must describe all securities and investments bought and sold, with the cost or net proceeds of each purchase or sale, and must list all cash, securities, and other property held at the end of that period. The account must include a list of the retirement system assets and the current fair market value of each asset at the end of that period. If a current fair market value is not available for a particular investment or is not applicable to a particular investment, the board must assign a value to that investment. The board must apply the investment valuation method on a consistent basis. If the board changes the investment valuation method, the board must notify the council of the change.
- (c) *Reporting and disclosure.* The board must prepare for the chief administrative officer any documents required by law.

Sec. 33-61C. Standard of care.

A fiduciary must discharge the fiduciary's duties regarding the retirement systems:

- (a) only in the best interest of the participants and their beneficiaries;
- (b) only to provide benefits to the participants and their beneficiaries, and defray reasonable expenses of administering the retirement systems;
- (c) with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with the same matters would use to conduct a similar enterprise with similar purposes;
- (d) by diversifying the investments of the retirement systems to minimize the risk of large losses, unless it is clearly not prudent to diversify under the circumstances;
- (e) according to a good faith interpretation of the law governing the retirement systems;
- (f) according to a good faith interpretation of the documents and instruments governing the retirement systems, if they comply with this Article.

Sec. 33-61D. Ethics; conflict of interest.

- (a) Members of the board are subject to the provisions of chapter 19A, "Ethics," of the Montgomery County Code.
- (b) Except as otherwise provided in this section, members and employees of the board must not:

- (1) Be a party to any transaction engaged in by the board or an investment manager involving the assets of the retirement system;
 - (2) Use the gains or profits of the system for any purpose except to make investments or payments that are authorized by the board;
 - (3) Deal with the assets of the retirement system for their own interest or account;
 - (4) Act in any transaction involving the retirement system on behalf of a party whose interests are adverse to the interests of the retirement system or the interests of the members or beneficiaries of the retirement system; or
 - (5) Become an endorser or surety, or in any manner an obligor, for moneys loaned to or borrowed from the board.
- (c) In this section, nothing prohibits a member or employee of the board from:
- (1) Being a member of the retirement system;
 - (2) Receiving a benefit the member or employee of the board is entitled to as a member or beneficiary in the retirement system so long as the benefit is computed and paid on a basis that is consistent with the terms of the retirement system as applied to all other members or beneficiaries; or
 - (3) Serving as a trustee or employee of the board in addition to being an officer, employee, agent, or other representative of a party in interest.

Sec. 33-61E. Qualification amendments to elected officials' plan.

The elected officials' plan and any related trust agreement, investment advisory agreement, custodial agreement, annuity contract, or similar agreement, may be amended by the county at any time, either prospectively or retroactively, to conform to the provisions of the Internal Revenue Code. However, if the Internal Revenue Service requires an amendment and the amendment reduces a benefit provided by the elected officials' plan, the required reduction must be paid as a separate benefit from a nonqualified supplemental plan to be established by the county. The benefit payable to a member from the elected officials' plan and the related benefit payable from the supplemental plan, when taken together, must equal the benefit promised under the elected officials' plan immediately before the benefit amendment required by the Internal Revenue Service.

Sec. 33-61F. Qualification amendments.

The retirement system and any related trust agreement, investment advisory agreement, custodial agreement, or similar agreement, may be amended by the county at any time, either prospectively or retroactively, to conform to the provisions of the Internal Revenue Code or similar act or amendment thereto or regulations promulgated thereunder. However, if the Internal Revenue Service requires an amendment and the amendment reduces a benefit provided by the retirement system, the required reduction must be paid as a separate benefit from a nonqualified supplemental plan to be established by the county. The benefit payable to a member from the retirement system and the related benefit payable from the supplemental plan, when taken together, must equal the benefit promised under the retirement system immediately before the amendment required by the Internal Revenue Service.

Sec. 33-61G. Termination and discontinuance of contributions.

- (a) *Rights upon termination or discontinuance of contributions.* Full vesting of all accrued benefits must occur upon termination of the retirement system, or upon complete discontinuance of contributions thereto, to the extent that such accrued benefits are funded.
- (b) *Provision for allocation of unallocated funds.* Upon termination of the retirement system, or complete discontinuance of contributions thereto, any unallocated funds which are not necessary for the satisfaction of liabilities under the retirement system must be returned to the county.
- (c) *Limitation on the use of certain dividends and credits.* Credits or returns under any annuity contract, other than those arising from corrections of errors in records or computations (such as misstated ages or similar corrections), must not be paid to the county prior to permanent discontinuance of contributions or discontinuance of the retirement system. All dividends, experience rating credits, or employer surrender or cancellation credits ascertained prior to permanent discontinuance of contributions or termination of the retirement system must be applied regularly toward the premiums (or required contributions) next due for the purchase of any annuities. Any surrender or cancellation credits made available after discontinuance of contributions or termination of the retirement system, but before all retirement annuities with respect to service prior to such discontinuance or termination have been purchased, must be applied regularly as they are determined to purchase such retirement benefits so as not to discriminate in favor of officers and highly compensated persons. Any dividends, experience credits, surrender credits or cancellation credits made after permanent discontinuance of contributions or termination of the retirement system and after the satisfaction of all liabilities of the retirement system must be paid to the county.
- (d) *Reversion of surplus assets upon termination of the retirement system or discontinuance of contributions thereto.* Upon termination of the retirement system or complete discontinuance of contributions thereto, any assets which are not necessary for the satisfaction of liabilities under the retirement system, must be returned to the county.

Sec. 33-61H. Nonqualified supplemental retirement plan.

- (a) The county executive must establish a nonqualified supplemental retirement plan if it is necessary to pay benefits to members of the employees' retirement system whose benefits were reduced so that the employees' retirement system would receive a favorable letter of determination from the Internal Revenue Service as to qualification under the Internal Revenue Code. The plan must be a nonqualified and unfunded retirement plan within the meaning of the Internal Revenue Code and the related United States Treasury Regulations and Revenue Rulings. However, the nonqualified supplemental retirement plan will not be an eligible or ineligible state deferred compensation plan within the meaning of section 457 of the Internal Revenue Code. The plan must not permit an employee to defer payment of an amount of the employee's basic or regular compensation, increases in compensation or supplements of compensation such as bonuses or overtime.

- (b) The benefits provided pursuant to the nonqualified supplemental retirement plan must be paid from the general assets of the county or through such funding vehicle as may be permitted by the Internal Revenue Service with respect to nonqualified supplement retirement plans.
- (c) If the nonqualified supplemental retirement plan is established, the county executive must obtain a private letter ruling from the Internal Revenue Service with respect to the plan.

Sec. 33-61I. Termination of participation by a participating agency.

If a participating agency decides to stop participating in any retirement system plan, it must give written notice to the Chief Administrative Officer. The Chief Administrative Officer and the withdrawing agency must agree on a date for the withdrawal, and, to the extent applicable to the plan at issue, comply with Section 33-47(d)(12). Any transfer of assets resulting from the withdrawal must comply with Section 414(l) of the Internal Revenue Code. No assets may revert to a withdrawing agency unless the Internal Revenue Service approves the reversion.

Sec. 33-61J. Transfer of assets between trust funds of the retirement system.

To the extent permitted by the Internal Revenue Code and applicable guidance under the Internal Revenue Code, the County may transfer assets of the retirement system relating to an account or accrued benefit of a participant in trust-to-trust transfers between the trusts of the Employees' Retirement System and the Retirement Savings Plan to correct operational failures relating to such accounts or accrued benefits.